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Letter dated 18 July 2001 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I am transmitting to you the attached text of the full presentation submitted by the delegation of the Republic of Iraq during the dialogue from 26 to 27 February 2001 at United Nations Headquarters in New York.

I should be grateful if you would have the present letter and the annexed presentation in English circulated as a document of the Security Council.

(*Signed*) Mohammed A. **Al-Douri**
Ambassador
Permanent Representative

Annex to the letter dated 18 July 2001 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

Presentation of the delegation of Iraq in the dialogue with the Secretary-General

(New York, 26 and 27 February 2001)

OPENING STATEMENT BY THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF IRAQ IN THE DIALOGUE WITH THE SECRETARY GENERAL

NEW YORK, 26 February 2001

Excellency

I should like to express our thanks to Your Excellency for this opportunity to embark on a dialogue in regard to the relationship between Iraq and the Security Council in order to get out from the present impasse and proceed towards the final lifting of the embargo on Iraq. This step has been long overdue. As you know, my Government has always favoured dialogue, and has been calling for it for a long time. But the response has not been forthcoming. All we received has been nothing but impositions, or mere neglect, instead of a hard look at the record of implementation in order to do justice to the obligations provided for in the resolutions of the Security Council.

At the outset, I should like to state that we intend to make a comprehensive presentation of the facts as we see them on the relationship between Iraq and the Security Council. Since this is the first round of a dialogue, it is important in our view that a factual presentation of the record should be as comprehensive as possible within the constraints of time at our disposal. While I shall concentrate on the fundamental points, I shall, with your permission, call on my colleagues to intervene to elaborate on the topics as necessary.

Iraq has implemented all the obligations under the relevant resolutions of the Security Council.

The provisions of the cease-fire resolution (686) were implemented in full.

The various obligations under resolution 687 were also implemented. Iraq recognized the sovereignty, territorial integrity and independence of Kuwait, and its borders as demarcated by the United Nations. It has cooperated with the United Nations and fulfilled its obligations fully in regard to the deployment of the UN Observers Unit. It has fulfilled all the requirements of paragraphs 7 to 13 related to disarmament along with the relevant resolutions related thereto, namely those dealing with ongoing monitoring and the import/export mechanism. Iraq returned all Kuwaiti property items found and committed itself to return all items to be found in the future. Furthermore, Iraq accepted the principle of liability under international law as required by the resolution 687. Iraq repatriated all prisoners of war and performed, and continues to perform, the duty to cooperate in accounting for missing persons. Finally, it has implemented the demand to denounce all kinds of international terrorism.

I should like to emphasize that the obligations imposed upon Iraq in the resolutions of the Security Council have been unusually harsh and transcended normal legal bounds required for the restoration of international peace and security. In the process of implementation of these obligations, Iraq had to confront all kinds of unusual procedures, including abnormal twists and moving the goal post, in relation to which it has no choice. While we will try to show this during this dialogue, the point I want to make now is that Iraq spared no effort to implement the obligations imposed on it, hoping in the meantime that it will lead to a position on the part of the Security Council commensurate with its clear obligations towards Iraq as it has provided in its resolutions.

In this connection, a fundamental point needs to be made. As I affirmed, Iraq implemented all the obligations under the resolutions of the Security Council. But for argument's sake, whatever is the position of certain members of the Security Council in regard to the implementation by Iraq of the obligations imposed upon it, a question in regard to which the views in the Council are not uniform, the fact remains that what Iraq has fulfilled, by any conceivable percentage, would have been sufficient to induce the Council years ago to adopt a resolution at least to reduce the embargo in accordance with paragraph 21 of resolution 687 and to implement paragraph 22 of the said resolution. This is the only position, which shows respect on the part of the Council to its own resolutions. But it has not taken place so far. The position of the Council remained rigid and strict as a result of the American and British attitudes, with their political agenda against Iraq contrary to the resolutions of the Council and which were facilitated by the hegemony of the United States and their veto power.

So, and as we shall show later on during this dialogue, we witness in the field of the resolutions adopted by the Council a clear denial of the rights of Iraq, not only in the conception of the obligations imposed, but also in regard to the process of implementation.

In addition, there are aspects of the relationship between Iraq and the Security Council, which fell outside the resolutions of the Council. But these aspects were totally neglected by the Council despite the fact that it was its duty under the Charter to act upon them.

No-fly zones were imposed in Northern Iraq in 1991, and in Southern Iraq in 1992. The latter was extended in 1993. Furthermore, since the declaration of a formal cease-fire under resolution 687, the United States committed three acts of aggression against Iraq in January 1993, June 1993, and September 1996. In addition it committed together with the United Kingdom two acts of aggression in December 1998 and February 2001. In fact, since December 1998, the Anglo American acts of aggression, including supporting, financing and training terrorist groups aiming at destablizing Iraq and threatening its territorial integrity, continued unabated.

There is also a fundamental paradox here. The Security Council has continued to call upon Iraq to comply with its resolutions, despite the fact that Iraq has done so. Yet, the Council has not reacted to date to the forcible imposition of the no-fly zones by the United States and the United Kingdom over Iraq without any authorizing resolution from the Council, and contrary to the conditions of the formal cease-fire provided for in resolution 687. Also, there has not been any reaction from the Council in respect to the acts of aggression committed against Iraq. This situation which has been maintained by two permanent members of the Council constitute, from the legal and practical viewpoints, a violation of the cease-fire under resolution 687, and in the ultimate sense a destruction of the very foundation of the resolution and all that has resulted from it unless the Security Council corrects the situation, and compensates Iraq on the same basis underlying the decisions it had adopted to impose compensation upon Iraq. This paradox contradicts the essence of justice. It is also an example of an implicit, if not explicit, abdication of responsibility contrary to the duty of the Council to exercise its powers and functions under the Charter.

Is it not a strange paradox to request any State to adhere to the resolutions of the Council at a time when two permanent members (the United States and the United Kingdom) do not abide by the resolutions adopted by the Council in relation to Iraq, although these two States were the prime movers behind the adoption of the said resolutions?

This also applies to the rulers of Kuwait, who participate directly in the American and British violations in the southern no-fly zone by giving all the required facilities, including financial support, to the operation of American and British planes, which carry out the aggression against Iraq, despite the benefits they reaped from resolution 687, such as recognition, the borders, and compensation. Needless to mention, of course, that Kuwait does not refrain from intervening in the internal affairs of Iraq through rendering political, material and moral support to the so-called Iraqi opposition, which represents a grave violation of the relevant provisions of the resolutions of the Security Council.

On the basis of the above, the main conclusion in this respect is that the action is required from the Security Council, and not from Iraq. Through seven and one half years (since April 1991 to December 1998) Iraq, despite the huge sacrifices it had to make, has fulfilled its commitment to implement fully its obligations under the Council's resolutions, while the Security Council has not honoured its obligations under the same resolutions towards Iraq, on the one hand, and resolution 687 has been violated by the United States, the United Kingdom and Kuwait, on the other.

What is required now is to correct the present grave situation so that Iraq can feel that the Security Council is dealing with it in a just, balanced and equitable manner, rather than simply calling on it to do what is considered to be duties on Iraq by those who have hidden agendas against it. The embargo on Iraq should be lifted, its sovereignty should be respected and all acts of intervention in its internal affairs should cease.

In addition to the central point in the situation exposed above, without the consideration of which a balanced relationship between Iraq and the Security Council on the basis of mutual obligations cannot be established, there are important grievances by Iraq, which require a just and balanced consideration.

Compensation, which amounted to hundreds of billions of dollars, has been imposed on Iraq as a result of remaining for seven months in Kuwait. But the Council has not considered at all Iraq's well-founded rights to compensation in regard to the illegal imposition of the no-fly zones and the great losses and damage it has suffered through eleven years resulting from the acts of the United States, the United Kingdom and Kuwait. The damage and the losses cover the following:

1. The destruction suffered by Iraq during the 1991 in regard to aggression against civilian installations, which were alleged to be related to Iraq's presence in Kuwait.
2. The destruction that has taken place in Iraq as a result of the imposition of the illegal no-fly zones in Northern and Southern Iraq, the bombardments and the resulting destruction of the American aggression twice in 1993, and 1996, and the American and British aggression in 1998 and 2001with the support of Saudi Arabia and Kuwait, which continues to-date.
3. The human, material, and spiritual damage and losses suffered by Iraq as a result of the comprehensive embargo and its unjustified continuation, which is in contravention of the Charter.
4. Threats against the sovereignty, territorial integrity, political independence, external and internal security and intervention in internal affairs.

Iraq demands compensation on all the losses and damage incurred in this regard and stands ready to present all the relevant items whenever the question is discussed seriously. Iraq considers the satisfaction of its right to compensation from the United States, the United Kingdom, Kuwait, Saudi Arabia and Turkey in this respect a fundamental factor to resolve the present impasse.

If this imbalance remains in dealing with Iraq, it would be strange to continue to show Iraq at fault and call on it to implement obligations under international law, while others escape from the responsibility to implement the obligations incumbent upon them as a result of their violations of international law and resolution 687 for all those years?

Moreover, there are numerous transgressions in the various fields covered by the resolutions of the Council or otherwise. The field of disarmament comes first. On this question Ambassador Samir al-Nimah will intervene. No less important are the transgressions in respect to the no-fly zones and the acts of aggression under various pretexts and the continuation of aggression. This will be taken up by Under-Secretary Riyadh al-Qaysi. Next comes the important area of compensation, which will also be handled by Under-Secretary al-Qaysi. The supposedly humanitarian resolution 986 and the Memorandum of Understanding signed with the Secretary-General, have witnessed transgressions, on which Ambassador Saeed al-Musawi will speak. Finally, Under-Secretary al-Qaysi will finally speak on the questions of the demarcation of boundaries and missing persons as well as certain aspects of the transgressions with particular reference to the destruction inflicted on Iraq and the continuation of the embargo against it. The contributions of the members of my delegation will be made in a concentrated form. The details thereof will be presented in the following rounds of the dialogues.

On the basis of the above, it is not logical or just to request Iraq now to present any additional thing to what it had already done, without any legal ground. It is the Security Council, which is called upon to secure respect by others to its resolutions, especially the United States, the United Kingdom and the rulers of Kuwait, to correct the inequities, to compensate the loss and damage to Iraq and to restore the balance in dealing with it.

Excellency

It is our hope that our views and grievances will be presented to the Security Council. The Council should consider the ways and means to eliminate the inequities, compensate the losses and damage, and to restore the balance, so that in the light thereof, the Council could continue the dialogue with Iraq to reach a balanced, equitable agreement in harmony with international law.

Disarmament

In the relationship between Iraq and the Security Council, this issue has acquired a special importance. In the process of implementing the relevant provisions on this issue, namely section C of resolution 687, Iraq had to grapple with problems totally unrelated to the requirements of implementing the obligations set out in resolution 687. Ample evidence exists in the record on how the UN was utilised as a tool for the achievement of the policy objectives of the United States and the United Kingdom regardless of the provisions of the Council's resolutions and their underlying objectives. Despite the enormous efforts made by Iraq, and the implementation of all the obligations required by the relevant resolutions of the Council, two permanent members of the Council, namely the United States and the United Kingdom, continue to allege that Iraq is not entitled to any relief under the resolutions. This position is taken despite the clear correlation between implementing the disarmament-related provisions of resolution 687 and the commitment by the Council, under the same resolution, to lift the economic embargo on Iraq in proportion to the implementation of the obligations.

During the course of events, the two bodies entrusted with the tasks of working on the question of weapons with Iraq, namely EX-ex-UNSCOM and the IAEA, have not acted as the free and professional agents of the international community, but rather as the means to enable the American and British policies to be achieved. In this connection, EX-ex-UNSCOM , specially, distinguished itself of harbouring elements which for years had pursued their functions in accordance with American , rather than UN, instructions. In this connection, the record is long, detailed and extensive. Generally, it is sufficient to indicate in this connection that ex-UNSCOM pursued, clearly and unequivocally, a conduct of placing obstacles, creating crises, changing or expanding concepts of work, stressing questions which are unrelated to the weapon files or which are either minor, completed , politicizing technical subjects, changing tasks continuously and thereby prolonging the process by the creation of many loose ends, and so on.

Any impartial examination of the record leads to the definite conclusion that Iraq has implemented substantively all its obligations under Section C of resolution 687.

In accordance with paragraph 7 of resolution 687, Iraq reaffirmed fully its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and ratified the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972 (Letter dated 18 April 1991 addressed by the Foreign Minister of Iraq to the President of the Security Council).

Iraq has fulfilled the requirements of paragraphs 8, 9 and 10 of the resolution, which fall within the competence of ex-UNSCOM.

Iraq has also fulfilled its obligation under paragraph 11 of the resolution by reaffirming its obligations fully under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 (Letter of the foreign Minister of Iraq of 18 April referred to above).

Furthermore, Iraq has fulfilled its obligations under paragraphs 12 and 13 of the resolution, which relate to nuclear weapons and fall within the competence of the IAEA.

In addition, Iraq accepted the obligations set forth in resolution 715(1991) by a letter dated 26 November 1993 from the Minister of Foreign Affairs to the President of the Security Council (documentS/26811). The monitoring system established under the said resolution was functioning effectively since 1994 and until it was destroyed by the Anglo American aggression of December 1998.

Moreover, the import/export mechanism established under resolution 1051(1996) was fully operational until the Anglo-American Aggression of December 1998.

> The above-mentioned facts can be evidenced by a number of reports from ex-UNSCOM and the IAEA. For example, according to a Reuters report on 13 January 1993, Ambassador Ekeus himself told Swedish Radio that "Iraq compliance as been a success so far. It would be tragic if the last five per cent of implementation could not be carried out."

In regard to the field of missiles and chemical weapons, ex-UNSCOM reported in 1995 the following:

> " ... In the ballistic missiles and chemical weapons areas, the Commission is now confident that it has a good overall picture of the extent of Iraq's past programmes and that the essential elements of its proscribed capabilities have been disposed of.
>
> The Commission is, however, satisfied that, in the missile and chemical fields, it has achieved such a level of knowledge and understanding of Iraq's past programmes that it can have confidence that Iraq does not now have any significant proscribed capability. It is also confident that the comprehensiveness of its ongoing monitoring and verification activities, while those activities continue, is such that the Commission would detect any attempt to reconstitute a proscribed capability in these areas." (Paragraphs 29 and 30 of document S/1995/494).

Furthermore, in April 1997 ex-UNSCOM reported the following:

" The accumulated effect of the work which has been accomplished over six years since the cease-fire went into effect, between Iraq and the coalition, is such that not much is unknown about Iraq's retained proscribed weapons capabilities." (Paragraph 46 of document S/1997/301).

Coming now to the IAEA position in regard to the nuclear field, late Professor Maurizio Zifferero, the Leader of the Action Team of the IAEA, stated in Baghdad to AFP on 2 September 1992 that " Iraq's nuclear programme stands at zero now."

Moreover, the IAEA reported in October 1997 the following:

> " As indicated in the foregoing, the IAEA's activities regarding the investigation of Iraq's clandestine nuclear programme have reached a point of diminishing returns and the IAEA is focusing most of its resources on the implementation and technical strengthening of its plan for the ongoing monitoring and verification of Iraq's compliance with its obligations under the relevant Security Council resolutions." (Paragraph 83 of document S/1997/779)

On 9 April 1998, the Agency reported again as follows:

> " The Iraqi counterpart has fulfilled its obligation to produce a document containing a summary of the technical achievements of its clandestine nuclear programme. The summary is regarded by the

IAEA to be consistent with the technically coherent picture of Iraq's clandestine nuclear programme developed by the IAEA in the course of its activities in Iraq."

" As previously reported, the IAEA is focusing most of its resources on the implementation and strengthening of the technical content of its activities under the OMV plan. The IAEA will, however, continue to exercise its right to investigate any aspect of Iraq's clandestine nuclear programme, in particular, through the follow up of any new information developed by the IAEA or provided by Member States and to destroy, remove or render harmless any prohibited items discovered through such investigations." (Paragraphs 35 and 36 respectively of document S/1998/312).

On 27 July 1998, the IAEA report noted the following:

"As previously recorded, there are no indications of Iraq having retained any physical capability for the indigenous production of weapon-usable nuclear material in amounts of any practical significance, nor any indication Iraq has acquired or produced weapon-usable nuclear material other than the nuclear material verified by the IAEA and removed from Iraq in accordance with paragraph 13 of resolution 687 (1991" (Paragraph 35 of document S/1998/694).

It is significant to note that, on the whole, the reports of ex-UNSCOM and the IAEA contained no indication that Iraq had failed in its obligations towards the monitoring regime.

Theory of concealment

It is to be recalled that during the last few months of the tenure of the first Executive Chairman, ex-UNSCOM pursued the avenues of the 'theory of concealment', which was conceived by Scott Ritter, with Israeli connections, and instead of rectifying the situation Ekeus approved it. ex-UNSCOM adopted this theory officially and pursued it actively on the ground. This led to two serious incidents on 10 and 12 June 1997 during which ex-UNSCOM inspection teams attempted to conduct an intrusive large-scale inspection to a Presidential Site, which fell largely outside the scope of ' the Modalities for the Inspection of Sensitive Sites' concluded with the Executive Chairman in 1996. These incidents prompted the Executive Chairman to write a letter to the President of the Security Council on 12 June 1997 (S/1997/474), in which it was alleged that access by a Special Commission inspection team to sites in Iraq designated for inspection by the Commission was excluded by the Iraqi authorities. The Security Council adopted resolution 1115(1997), which requested the Chairman of the Special Commission to include in his consolidated progress reports under resolution 1051 (1996) an evaluation of Iraq's full cooperation, including allowing the inspection teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect in accordance with the mandate of the Special Commission, and to give immediate, unconditional and unrestricted access to officials and other persons under the authority of the Iraqi Government whom the Special Commission wishes to interview, so that the Special Commission may fully discharge its mandate.

Richard Butler succeeded Ambassador Ekeus as Executive Chairman on 1 July 1997. He committed himself to act professionally, technically, factually and without any recourse to the public media. He committed himself also that these were to be the standards for his first report to the Security Council, which was due in October 1997.

Butler reneged on all those counts (see his report in document S/1997/774). On 19 and 21 November 1997, Butler and a group of ex-UNSCOM personnel briefed the Council on the report. In view of the incorrect information on the progress made by Iraq in closing the armament files, Iraq submitted detailed comments on the briefing in the latter dated 24 November from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council (document S/1997/925 dated 24 November 1997).

At any rate, Butler's report, distinguished for its perfidious character, was taken by the United States and the United Kingdom as a basis for the adoption on 23 October 1997 of resolution 1134(1997. This latter resolution, which was adopted by 10 votes in favour and 5 abstentions, namely Russia, France, China, Egypt and Kenya, introduced after the usual condemnations and demands and requests, penal measures against certain categories of Iraqi officials.
This resolution highlight the political extortion by the two permanent members namely the United States and the United Kingdom to escalate and to prolong the crises. Iraq in the face of this predetermined act by the ex-UNSCOM was obliged to react.

Following the adoption of resolution 1134 (1997), the Revolution Command Council of the Republic of Iraq issued a Statement on 29

October 1997, the substance of which was conveyed by Mr.Tariq Aziz, the Deputy Prime Minister in the letter addressed to the President of the Security Council. The Letter stated as follows:

These examples we have mentioned are preparatory for a comprehensive presentation of Iraq's position we are ready to present it in appropriate time during the following rounds of dialogue.

> "Resolution 1134 (1997), the latest resolution adopted by the Security Council, and the way the United States succeeded in getting it adopted led three permanent members, namely, Russia, China and France, and two other members, Egypt and Kenya, to abstain. This clearly reflects the arbitrary position imposed by the United States against Iraq, using pressure and blackmail.
>
> More than six and a half years have elapsed since the Special Commission started its work in Iraq, during which all weapons proscribed and dozens of factories, thousands of pieces of equipment and instruments which the Commission claimed to be related to the proscribed weapons, have been destroyed. Moreover, many factories, pieces of equipment and instruments of civilian use have been also destroyed through arbitrary decisions, thus depriving Iraq of them while it has been under comprehensive embargo for seven years. Furthermore, during the same period, thousands of intrusive and regular inspections have been conducted. And since 1994, a comprehensive and very strict monitoring system has been operational monitoring all what is relevant and irrelevant to the subject of the proscribed weapons. Despite that, the Special Commission has not submitted to the Security Council the factual, objective and fair report that would lead to implementation of paragraph 22 of resolution 687 (1991). The Commission still pursues the approach of deliberate prolongation. I had made clear many facts related to this matter in my letter to you on 12 October 1997 (S/1997/789).
>
> The main reason for all of this is the position of the United States and the roles of the American personnel and other personnel of the ex Special Commission who implement the American policy.
>
> The United States insolently declares that it is determined to change the national Government of Iraq and to maintain the embargo against Iraq regardless of the implementation of the

resolutions of the Security Council. The aforementioned personnel of the Special Commission, who occupy senior and influential posts and whose number is very large, are executing this policy. This render the Special Commission an institution influenced to a large extent by the America's hostile policy aimed at fulfilling its illegal and illegitimate objectives. Therefore, the Special Commission, in terms of its composition, activities and rules, is no longer a neutral institution operating impartially and objectively to implement the provisions of Security Council resolutions 687 (1991) and 715 (1991) in accordance with the conceptual framework of a responsible international institution.

Iraq has endured multifarious acts of injustice and many deliberate abuses by the American inspectors and experts and those staff of the Special Commission who implement the American hidden agenda. The behaviour of those individuals, particularly during the inspections, became clearly threatening to Iraq's national security and its leading institutions under the declared hostile policy of the United States Of America, its constant threat to Iraq and carrying out, from time to time, that threat by military aggression.

The Deputy Prime Minister of Iraq illustrated these aspects in detail in my letter to you on 12 October 1997 and before that in my letter dated 15 June 1997 (S/1997/456).

Leaving the situation as it is means maintaining indefinitely the embargo against Iraq according to the wishes and whims of those who have tendentious purposes. Thus an entire people will be held hostage to the will of certain individuals working with the Special Commission who are actually executing the hostile, illegal and illegitimate policy of America. This is the practical significance of the aim of the latest resolution which is intended to be achieved by those who engineered it. Just one inspector out of those to whom I referred can fabricate a crisis for which America resorts to exercising pressure and blackmail in the Security Council as it has recently done to impose its will through additional resolutions, such as the latest resolution and previous resolutions.

On 3 November 1997, Mr. Tariq Aziz, the Deputy Prime Minster of Iraq, and the Secretary-General, agreed that Iraq receive a Mission Led by Mr. Lakdhar Brahimi to consider the situation. The Mission visited Baghdad from 5 to 7 November 1997. The Leader of the Mission delivered a letter from the Secretary-General to Mr. Saddam Hussein, the President of the Republic of Iraq, which was received on behalf of the President by Mr. Aziz, and stated that the Mission is ready to listen to Iraq's concerns and grievances which he would present them to the Secretary-General, who would in turn refer them to the Security Council.

Iraq presented to the Mission the following concern:

> While these resolution required Iraq to fulfill specific obligations, they provided for corresponding obligations towards Iraq that should be fulfilled by the Security Council, such as paragraphs 21 and 22 of resolution 687 (1991). Over more than six and a half years Iraq has complied with its obligations under those resolutions. However, the Security Council has not fulfilled its obligations towards Iraq yet. It has not alleviated, even by 1%, the comprehensive and unjust embargo imposed on Iraq. This situation has created a serious imbalance in which injustice and abuses have been exercising against Iraq since 1991. Moreover, resolution 1134 (1997) threatened to impose additional unjust sanctions and canceled the regular 60-days reviews of the sanctions imposed on Iraq.
>
> It is not fair that the Americans themselves become both the judge and foe in the work of the Special Commission. The presence of the Americans in large numbers in the headquarters of the Special Commission and its inspection teams as well, is the main reason for prolonging the work of the Special Commission and the completion of the requirements of paragraph 22 with no warrant. The American inspectors themselves create crises and problems in order to prevent the Special Commission from completing its work and submitting its final factual report which opens the way to the speedy implementation of paragraph 22 of resolution 687 (1991).
>
> We have cooperated with the Special Commission for more than six and a half years. We have endured what we had to endure. But, after six and a half years, we have reached a situation where we did not find any clear prospect for putting an end to the bitter suffering of our people resulting from the embargo and the continues threats to our national security Thus, it is imperative to

> find a solution to this suffering and threats through the fulfillment by the Security Council of its obligations towards Iraq as provided for by the resolutions themselves. This is the substance of our position in 1997 and the main and sole reason behind the recommendations made by the Representatives of the people the Iraqi national Assembly and the decisions accordingly taken by Iraq's leadership on 29 October 1997. Iraq's legitimate and just demands to lift the unjust embargo imposed on it for more than seven years are as follows:
>
> I. A decision by the Council to implement paragraph 22 immediately on the basis of strict legal interpretation without any additional conditions.
>
> II. After that, work should commence towards lifting other prohibitions fully and completely.

Joint Iraqi Russian Communiqué

On 20 November 1997, a Joint Iraqi Russian Communiqué was issued as a result of the official visit of Mr. Tariq Aziz, the Deputy Prime Minster to Moscow. The Communiqué referred to the exchange of letters between President Boris Yeltsin and President Saddam Hussein and noted Iraq acceptance to allow ex-UNSCOM to resume its normal work in Iraq as of the date on which the Communiqué was issued (document S/1997/907).

The issue of the Presidential sites

To illustrate clearly the underlying objectives of the American and British game It should be remembered that during the period under consideration, the United States and the United Kingdom had been engaged in an intensive vile campaign, which concentrated on the false allegation that Iraq was hiding chemical and biological weapons in Presidential Sites. Iraq addressed two identical letters to the President of the Security Council and the Secretary-General on 26 November 1997 with a view to unmask the American and British falsehoods and place on record the Statement issued on that date by the Revolution Command Council of the Republic of Iraq. The letter confirmed Iraq's readiness to host for a week or more, two representatives from each of the States represented in the Special Commission and five technical or diplomatic representatives of the permanent members, in the Presidential Sites, so that they can verify the truth (document S/1997/933).

However, Butler's ill intention soon emerged. He stated in the consultations of the Security Council held on 24 November 1997 that the June 1996 Modalities for Inspection of Sensitive Sites, which were agreed to with Ambassador Ekeus, did not possess the quality of a joint agreement but they were rather a unilateral opinion on the part of Ekeus. He noted that he had proposed to Iraq that the said modalities should be reviewed. Then came Butler' report on his visit to Baghdad for the period 12 to 16 December 1997, which was a clear attempt designed to escalate the situation and incite the Council against Iraq (document S/1997/996). Consequently, the Security Council issued a Presidential Statement in which stressed that failure by the Government of Iraq to provide the Special Commission with immediate, unconditional access to any site or category of sites is unacceptable and a clear violation of the relevant resolutions of the Council (document S/PRST/1997/56).

With the commencement of 1998, ex-UNSCOM attempted again to conduct an intrusive inspection. On 12 January 1998, an official spokesman of the Government of Iraq announced the decision to stop the work of ex-UNSCOM 227 as of 13 January until its composition is revised in a balanced manner (that inspection team was composed of 9 Americans, 5 British with one Russian and one Australian) (document S/1997/273).

Then, Butler presented a report on his visit to Baghdad during the period 19 to 21 January 1998, in which he expressed the opinion that he felt bound [sic] to inform the Council that Iraq was trying to challenge the conditions made by the Security Council (document S/1998/580). Furthermore, he stated to the New York Times that Iraq has bacteriological weapons in sufficient quantities to obliterate Tel Aviv and that he supports the extension of the no-fly zones. (New York Times, 27 January 1998). France, Russia and China rejected those irresponsible statements and accused Butler of having acted outside his mandate. In the meantime, Iraq protested the same statements through a letter addressed on 27 January 1998 by the Permanent Representative of Iraq to the Secretary-General.

Those actions on the part of Richard Butler and his collaborators provided the United States and the United Kingdom with the pretexts to heighten the tension and pursue the build-up of their military forces in the region with a view to attacking Iraq.

At this juncture, the Secretary-General received strong encouragement from members of the Council, except the United States and the United Kingdom, and many non-members, to intervene in the situation and visit Iraq to seek a solution to the crisis. The visit took place for the period 20 to 23 February 1998, and resulted in the signing a Memorandum of Understanding. With the signature of the MOU, the crisis was resolved for then, and the Anglo-American impending aggression was aborted. The MOU was approved by the Security Council in resolution 1154(1998). It is worth recalling ex-UNSCOM set out to obviate the objectives of the MOU by certain provisions in the rules of procedure governing the visits to the sites and by violating those very rules on the ground.

On 17 April 1998, the Executive Chairman of ex-UNSCOM, Richard Butler, submitted the biannual report of the Commission to the Security Council (document S/1998/332). In view of the tendentious nature of the report, Mr. Tariq Aziz, the Deputy Prime Minster of Iraq, addressed a letter on 22 April 1998 to the President of the Security Council. The letter contained a detailed assessment of the information contained in the report and provided in its annexes all the details of the work done in Iraq in the armament field, which proves beyond any doubt that Iraq has fulfilled the requirements of its obligations under section C of resolution 687(1991) (Document S/1998/342 dated 22 April 1998).

Iraq worked intensively to prove to the members of the Security Council that it had satisfied all the requirements under section C of resolution 687. In April and June of 1998, The Minister of Foreign Affairs led high- level Iraqi delegations to present Iraq's views to Council members. The rejection of the United States and the United Kingdom to allow Iraq a formal presentation, contrary to the established rules of procedure of the Council, resulted in granting Iraq a presentation on the basis of the Aria Formula in April, and in a watered down version of that formula in June. Iraq's views were presented in detail, and the Council did not take action on them (for these views see the Annex attached herewith).

Despite that, Iraq and ex-UNSCOM agreed during the visit of Richard Butler to Baghdad from 11 to 15 June 1998, on a time-table for work to be one during the months of July and August in order to complete the remaining disarmament issues from ex-UNSCOM's viewpoint. The two sides agreed to hold two meetings for that end before the submission of the Commission's report to the Council in October 1998.

Butler reneged again on proceeding objectively with the discussion of the points included in the time-schedule. This led to a national debate in Iraq at all levels of the political spectrum. In the meeting held in Baghdad on 3 August, Richard Butler, ex-UNSCOM Executive Chairman, refused to provide clear answers to the questions put before him by the Deputy Prime Minister Mr. Tariq Aziz in regard to Iraq's record of implementation. Richard Butler was evasive, and that was a strong indication that working with ex-UNSCOM in the hope of reaching concrete conclusions was illusive. The detailed facts on the situation were communicated in the letter, addressed on 5 August 1998, by Mr. Tariq Aziz, the Deputy Prime Minister of Iraq, to the President of the Security Council and circulated in document S/1998/718. Consequently, Iraq decided to suspend cooperation with ex-UNSCOM and the IAEA in regard to the tasks of disarmament until the Security Council reviews the situation and grants Iraq its rights, especially by implementing paragraph 22 of resolution 687, since all the requirements for that implementation have been fulfilled. Iraq, however, stressed that it will continue with the monitoring activities required by resolution 715. The essential facts of the position of Iraq and its decision were communicated to the President of the Security Council in the Letter addressed by Mr. Tariq Aziz, the Deputy Prime Minster of Iraq, on 5 August 1998 and circulated in document S/1998/718 on the same date.

Butler's road map

It is significant to note at this point that throughout 1998, Butler talked a great deal about a " road map" of the remaining issues in disarmament which needs to be completed so that Iraq can secure the implementation of paragraph 22 of resolution 687, which provides for lifting the economic embargo. It is revealing that Butler admitted unequivocally the intense coordination he used to have in carrying out his tasks according to American instructions. In his book, he has this to say:

> "At ex-UNSCOM, We had developed the idea of presenting, informally, a "road map" that would outline the outstanding issues that needed to be resolved if we were to be in a position to declare Iraq disarmed. Designing the form and the contents of such road map would not be easy. I recall a breakfast meeting I'd had with the U.S. deputy ambassador to the United Nations, Skip Gnehm, on the day I took up the job as executive chairman. Gnehm had been at pains to warn me against giving Iraq a finite list of disarmament requirements

With Gnehm's warning in mind, we developed a road map that was not intended as a finite list of disarmament and monitoring issues but rather as an enumeration of the most important and controversial ones.

The Comprehensive Review

During the consultations held by the Security Council on 6 August 1998, the Secretary-General presented a proposal on a comprehensive review to be conducted by the Council on Iraq's compliance with the objective of ensuring that Iraq' had been effectively disarmed in order to free it from sanctions.

In resolution 1194 (1998) adopted on 9 September 1999, the Security Council welcomed the proposal on the comprehensive review and requested the Secretary-General to present his views on the subject. Iraq cooperated fully with the Secretary-General in this regard

In view of the devious manner followed by the United States and the United Kingdom to derail the comprehensive review from its normal course as envisaged by the Secretary-General, Iraq decided on 31 October 1998 to cease all forms of cooperation with ex-UNSCOM and its Executive Chairman, including its activities in the monitoring field, until such time as the Security Council takes steps to dismiss the Executive Chairman from his post and transform ex-UNSCOM into an international institution

Nevertheless, in response to the Secretary-General's letter of 13 November 1998, addressed to H.E. Mr. Saddam Hussein, the President of Iraq, and in appreciation of the content of the letter of President Boris Yeltsin, the President of the Russian Federation and Mr. Yevginy Primakov, the Prime Minister of the Russian Federation, and the positive positions expressed by China, France, Brazil and other States, and in order to give a further chance to achieve justice by lifting sanctions commencing with the implementation of paragraph 22 of resolution 687 (1991), Iraq decided to resume working with ex-UNSCOM and the IAEA by allowing them to perform their normal duties in accordance with the relevant resolutions of the Security Council and on the basis of the principles which were agreed upon in the Memorandum of Understanding signed between Iraq and the UN Secretary-General on 23 February 1998.

On 15 December 1998, Richard Butler presented to the Secretary-General his report on the work of ex-UNSCOM's teams for the period from 17 November to 13 December 1998 in order to show the extent of Iraq's cooperation with ex-UNSCOM so that the Secretary-General could confirm the cooperation in order to proceed with the comprehensive review. For the same purpose, the IAEA Director-General, submitted on 14 December 1998 his report on the same question

At any rate, while it was planned to discuss the reports of the Secretary-General, ex-UNSCOM and the IAEA by the Security Council on 16 December 1998, the representatives of the United States and the United Kingdom informed the Council that their governments used armed force against Iraq in order to destroy the programmes of weapons of mass destruction and prevent Iraq from threatening its neighbours since Iraq did not cooperate with ex-UNSCOM and the IAEA.

Richard Butler and his principal collaborators at ex-UNSCOM, were determined to give these two powers the necessary pretext to launch aggression against Iraq. It can hardly be assumed that Richard Butler was not coordinating with the Americans and the British. He in fact withdrew the personnel working in the Commission's headquarters in Baghdad few hours after the submission of his report without any authorization of the Security Council or the Secretary-General and without consulting them, despite the fact that he had been criticized in the Council for having taken such action in early November ad was requested to turn to the Council before taking such an action.

The aspect of ex-UNSCOM conduct was the determination to maintain in its relationship with Iraq a state of continuous crises by fabricated reasons, in order to facilitate armed attacks against Iraq by the United States alone or with the United Kingdom. This was the case of the act of aggression committed on 16-19 December 1998.

The Anglo-American aggression targeted industrial infrastructures, military sites, security sites, communication nodes, strategic sites and civilian institutions. With the destruction of these targets, the components of the monitoring system established by ex-UNSCOM in targeted sites were also destroyed.

Iraq is reiterating its just demands:

- Condemnation of the aggression.
- The aggressors should be held fully responsible and liable under international law to fully compensate Iraq according to the basis by which compensation was imposed on Iraq.

However as a result of the aggression, the deliberations of the Security Council on the comprehensive review came to an end, and the Council stood helplessly idle. The US and the UK escaped accountability. While Iraq's rights were completely ignored, efforts commenced after a while to cover the illegality of the Anglo-American actions and to rectify the situation. To that end, the Amorim's Panels were established to conduct a review, initially, of the two fields of disarmament and the humanitarian situation, to which as a result of Kuwait's endeavours with Anglo-American support, a third was added, namely the question of missing persons and return of property.

In the disarmament panel, ex-UNSCOM with American support secured its prime position. The panel conducted its review on the basis of a paper presented by ex-UNSCOM, i.e. the very culprit that created the problematic situation, which the panel was supposed to review. The deliberations of the panel witnessed all sorts of twists and turns in order to produce a harmonious result with the conclusions of ex-UNSCOM (See document S/1999/356, Annex I, dated 30 March 1999) Such was the only course acceptable to the United States and the United Kingdom.

Iraq presented its views informally to Ambassador Celso Amorim on the issues in the disarmament field. It also presented to certain members of the Council its comments on the Report of the first Panel, which dealt with issues of disarmament (these appear in the Annex attached hereto).

The fact that ex-UNSCOM did not function as a professional UN body, but rather as a tool under the full control of the United States and used by it for its own political purposes is no longer a secret. The revelations made since October 1998, including those made by former prominent personnel of ex-UNSCOM, illustrate the close ties between ex-UNSCOM on the one hand and the American and Israeli intelligence services on the other.[22] These revelations were not new for Iraq, as we had indicated on numerous occasions information to the same effect. Unfortunately, no one took our views seriously.

The VX Scandal

Concrete examples on the unprofessional and tendentious conduct of ex-UNSCOM abound. These range over a wide variety of working modalities designed to prolong the work by leaving so many loose ends so as to enable the non-closure of any subject. Iraq has pointed out these examples in numerous communications with the Security Council, the volume of which has been really incredible. No method was unjustified if it were to serve the objective even if it involved cheating. An example in point is the episode of the VX scandal, which surfaced when Butler declared in 1999 that VX samples have been left in ex-UNSCOM's headquarters in Baghdad, which were in fact smuggled into the country to contaminate missile fragments which were to be sent abroad for testing, so as to declare later on, as ex-UNSCOM did, that Iraq had produced and weaponized VX. It will be recalled that During the security consultations on the 21 and 23 July, 1999 concerning the subject of the VX standards left by the ex-UNSCOM at the BMVC chemical laboratory, the clarification of the matter presented by the ex-UNSCOM expert, Igor Mitrokhin, to the members of the council contained misleading information. What has been stated by Mr. Mitrokhin and others that the VX standards existing at the BMVC chemical laboratory cannot be used to contaminate metal pieces is technically inaccurate. VX material dissolved in IPA can be easily hydrolyzed by the edition of sodium hydroxide resulting in the degradation of the VX into harmless products, which could then be used to contaminate the metal pieces. With regard to the expiry period of the VX standards mentioned by Mr. Mitrokhin, this is again misleading as the expired material would be even more suitable as contaminant than the pure material which is only required for calibration in the order of one part per 10 million. If the requirements of such extreme accuracy were needed in ex-UNSCOM's work in Baghdad, why was it necessary to take all metal samples from Iraq to laboratories abroad for analysis? In any case, such measurements, if made, would be logged in the log book of the laboratory. In fact, the metal samples taken to the American laboratory during April 1998, which gave indications of VX degradation products, and showed remarkably strong peaks on the analysis chart presented during the discussion of the results held in Baghdad (ex-UNSCOM team 246 mid-July 1998), were taken by one or two of ex-UNSCOM's personnel and transported to Bahrain and to the USA. Yet, when more samples were taken from the same warheads in July 1998 under French and Swiss supervision and custody, they did not show VX degradation products.

All this confirms the suspicion that the VX story was engineered by ex-UNSCOM.

> Even more scandalous was the manner in which the destruction of these samples was carried out. It will be recalled that a special team of experts from the Organization for the Prohibition of Chemical Weapons (TM-1-99) was entrusted with the task of entering into the locked rooms at the BMVC headquarters in Baghdad, the keys for which were not delivered to the UN Humanitarian Coordinator when ex-UNSCOM official were withdrawn by Butler, and to make an inventory of the material found.

The Security Council, as a result of American pressure aimed at covering the fact behind the retaintion of VX samples in BMVC, hurriedly instructed the destruction of the samples. The destruction was carried out, and that action prompted a protest from Iraq which was communicated by the Letter dated 28 July 1999 addressed by Mr. Tariq Aziz, the Deputy Prime Minster of Iraq to the Secretary-General, which read as follows:

" The seven specimens of VX nerve gas having been destroyed yesterday, Tuesday, 27 July 1999, and further to our note verbale addressed to you on the same day through Mr. Prakash Shah, your personal representative, requesting that the specimens should be preserved and that they should not be destroyed pending further investigation of the matter, I should like to inform you that we protest in the strongest terms against the step that has been taken.

But the most dangerous of all the activities of ex-UNSCOM was those related to endangering the internal security of Iraq. Iraq is in possession of concrete information that along the years of its work, ex-UNSCOM brought into Iraq intelligence personnel whose sole functions were to monitor the communications of the high echelons of Iraqi officials including the leadership. That activity was conducted from a secure room at ex-UNSCOM headquarters in Baghdad. The same activity used to be performed by a spectrum analyser installed in the ex-UNSCOM ambulance, which accompanied inspection teams. No one was allowed to enter the secure room, or to be involved in the activity, including the Executive Chairman. Iraq stands ready to reveal all the information at the disposal of the Iraqi competent authorities when it deems necessary.

Iraq certainly fulfilled all its obligations relating to disarmament under section C of Security Council resolution 687(1991). The fact that Iraq had fulfilled all the requirements of section C of resolution 687, as evidenced by the above-mentioned conclusions of ex-UNSCOM and the IAEA, gain further support from the opinion expressed by one of the well-known officers of ex-UNSCOM. Scott Ritter, the ex-UNSCOM official who was at the centre stage of almost all the crisis situations of ex-UNSCOM, after making an extensive survey of ex-UNSCOM's achievements, wrote:

> " Given the comprehensive nature of the monitoring regime put in place by ex-UNSCOM, which included a strict export-import control regime, it was possible as early as 1997 to determine that, from a qualitative standpoint
>
> " Resolution 687 demanded far more than the dismantlement of viable weapons and weapons-production capabilities. Most of ex-UNSCOM's findings of Iraqi non-compliance concerned either the inability to verify an Iraqi declaration or peripheral matters such as components and documentation, which by and of themselves do not constitute a weapon or a programme. By the end of 1998, Iraq had, in fact, been disarmed to a level unprecedented in modern history, but ex-UNSCOM and the Security Council were unable- and in some instances, unwilling- to acknowledge this accomplishment."
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> *(Scott Ritter, " Redefining Iraq's Obligation: The Case for Qualitative Disarmament of Iraq," Arms Control Today, June 2000)*

Ritter repeated the same view as recently as few weeks ago.*(See Scott Ritter, The Saddam Trap, Harvard International Review, Winter 2001, p.7).*

Despite the fulfillment by Iraq of all the requirements of section C of resolution 687, the Security Council has not taken any step towards the implementation of its commitment to apply paragraph 22 of the said resolution, which called for ending the economic embargo upon the fulfillment of the requirements of section C of resolution 687, or reduce, if not lift, the sanctions imposed against Iraq in accordance with paragraph 21 of the resolution.

Paragraph 14 of resolution 687

Paragraph 14 of resolution 687 states that the Security Council takes note that the actions to be taken by Iraq in paragraphs 8, 9, 10, 11, 12 and 13 of the resolution represents steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons.

It is deeply regrettable that the Security Council totally ignored this paragraph and took no measure whatsoever for its implementation. Thus, the Security Council has not followed on this promise. Disarming Iraq should not exist in a vacuum. Unless the Council takes seriously all measures necessary to address weapons of mass destruction possessed by Israel, and the programmes to own the same by Iran, it will continue to be guilty of maintaining a policy of double standards and selectivity, which is contrary to the Charter.

In this connection, it should be noted that during the visit of Ambassador Rolf Ekeus to Baghdad from 15 to 19 July 1993, Iraq presented a position paper paragraph 8 of which stated:

> " The Security Council and the Special Commission hereby pledge themselves to work immediately and in earnest on the implementation of paragraph 14 of resolution 687 (1991), IN WHICH THE council makes clear that the actions to be taken by Iraq under the paragraph related to the weapons of mass destruction ' represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons'; and also to ensure that the measures of prohibition, monitoring and verification applied to Iraq, including those to do with ballistic missiles, are part of the plan applied to all countries of the region without exception. It is also natural to reaffirm Iraq's right to benefit from the advantages of implementation which accrue to the countries of the region."

The initial comment of the Executive Chairman on this was:

> " In respect of paragraph 8 of Iraq's position paper, implementation of paragraph 14 of Security Council resolution 687(1991) is not addressed to the Special Commission. The Special Commission has, and will continue, to draw attention to the

importance of this paragraph for the maintenance of international peace and security in the region. The Special Commission is also aware of the significance of the successful carrying out of its own mandate to the realization of the goal set out in paragraph 14 of the resolution." (Document S/27127, dated 21 July 1993, pages 7 and 9).

The promise by ex-UNSCOM to continue to draw attention to the importance of paragraph 14 was not followed with any concrete and meaningful action. It seems that that promise was made at a time when ex-UNSCOM was seeking Iraq's acceptance of ongoing monitoring under resolution 715 (1991), and the promise was an element to induce such acceptance. Indeed, Scott Ritter indicated that " the drafters of (paragraph 14) have privately stated to (him) that paragraph 14 was always intended to be a ' throw away' element designed to induce faltering Security Council members into presenting a solid front against (President Saddam) Hussein. There was never any intention on the part of the United States to pursue paragraph 14." (Scott Ritter, Harvard International Review, op.cit., pp.5-6). No wonder, then, that resolution 1284 (1999) has minimized the importance of the provisions of paragraph 14 of resolution 687.

Final Observations

- Grave injustice was inflicted on Iraq during the last ten years through the work of ex-UNSCOM. No fair minded person expects that Iraq will ever again allow this bitter experience to be repeated under any circumstances.
- Iraq was spied upon through the ex- UNSCOM and the IAEA. Iraq demands that the culprits be held accountable and legally prosecuted. This will have a positive impact on the credibility of the U.N.
- Iraq has fulfilled all its obligation set forth in the resolution 687 and its high time that the Security Council fulfill its own obligations, therefore we demand the implementation of paragraph 22 fully, immediately and without conditions.

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[22] Barton Gellman, The Washington Post, October 11 and 12, 1998; Peter J. Boyer, The New Yorker, November 9, 1998, pp.56-73; Scott Ritter, The New Republic, Dec.21, 1998, and Scott Ritter, Endgame, 1999, Simon & Schuster.

The Imposition of the Two No-fly Zones in Northern and Southern Iraq

It is important to recall the factual background of the imposition of the no-fly zones in Iraq. It will be seen from this background that the no-fly zones were imposed unilaterally against Iraq for objectives totally unrelated to the Security Council resolutions.

I - The No-fly Zone in Northern Iraq

The Governments of the United States of America, the United Kingdom and France used the conditions prevailing in the aftermath of the war and the outbreak of wanton violence, provoked by, and with the participation of, external forces, that ensued thereafter as a pretext to continue their acts of force against Iraq despite the formal cease-fire established by resolution 687 (1991). Those acts of force took the form of open intervention in the internal affairs of Iraq on the one hand, and the continuation of the acts of military force against Iraq on the other, under the guise of providing humanitarian assistance and protection to the civilian population. They also took the form of the imposition of the no-fly zone in northern Iraq on 7 April 1991. This measure was implemented under various pretexts through communications conveyed to Iraq in the following manner:

On 6 April 1991, Iraq was informed that the United States Air Force will fly over northern Iraq and drop foodstuffs, blankets, clothes, tents and relief materials for the Kurdish refugees. There was to be no fixed-wing air activity in the Iraqi airspace, and no civilian or military Iraqi aircraft should fly north of parallel 36 as from 7 April 1991 until further notice. On the same date, the British Government announced that it would undertake allegedly a similar relief operation on 8 April 1991.

On 7 April 1991, the Minister of Foreign Affairs of the Republic of Iraq sent to the Secretary General of the United Nations a letter containing Iraq's strong protest against the American-British action which violated Iraq's sovereignty and constituted a flagrant breach of the rules of international law as well as a direct intervention in the internal affairs of Iraq. It was pointed out that if the provision of assistance had been truly humanitarian in aim, it should have been undertaken in consultation with the Iraqi authorities, and the assistance should have been provided by way of Jordan or Turkey and not by violating Iraq's sovereignty. The Minister requested that his letter be circulated as a document of the Security Council (Document S/22459 dated 8 April 1991).

On 10 April 1991, Iraq was informed that an American military operation to be undertaken in support of the so-called Kurdish refugees.

The Iraqi Government's response to the American letter was immediate and clear. In a letter sent to the Secretary General of the United Nations on the same date, i.e. 10 April 1991, the Minister of Foreign Affairs stressed that Iraq was an independent, sovereign State and that it rejected intervention in its internal affairs. The flights by American aircraft constituted a violation of Iraq's sovereignty. If those flights were intended to monitor the relief operations as claimed by the United States, then it was possible to consult and co-operate with Iraq to that end. Iraq did not reject relief operations for those citizens, but demanded that the relief efforts be coordinated and organized with the Iraqi competent authorities. The Iraqi Government viewed with suspicion the insistence on the continued violation of Iraqi airspace on the pretext of monitoring the relief operations despite the fact that a definitive cease-fire was in force. There was no justification for those continued violations, which created a state of tension and constituted a dangerous precedent in international relations.

Prodded by the United States of America, Britain sought on 8 April 1991 to obtain support in the Security Council for the idea of creating inside the territory of Iraq an enclave to allegedly to be used as a safe haven for the Kurds pending their return to their homes under the supervision of the United Nations.

Iraq responded to this move by a letter dated 10 April 1991 addressed to the President of the Security Council with the request that it be circulated to the Members of the Council. The letter stated that Iraq was prepared to ensure the safe return of all Kurdish citizens to their homes and provide all that is required for their return. Iraq would welcome coverage of that operation by the international media and allow the International Committee of the Red Cross to participate therein. The letter confirmed the decision to grant amnesty to the Kurds, and welcomed the committee, which was to be dispatched by the Secretary General to monitor the situation in the north.

On 17April 1991, and the days following, the coalition-powers started to send their military forces and equipment to Iraq at will by way of Al-Khaboor border entry point with Turkey.

On 10 May 1991, the Permanent Representative of Iraq to the United Nations in New York met with the British Ambassador David Hannay at the United Nations Headquarters on the latter's request. The British Ambassador conveyed his Government's position concerning the Secretary General's statement announcing Iraq's rejection of the civil police issue. He stressed that the presence of the United Nations would give the Kurdish refugees assurance of their security and safety with no interference in Iraq's territorial unity, sovereignty or independence. "We are not reluctant," he stated, "to secure the adoption of a resolution under Chapter VII, and we know that we can; but we prefer to act in accordance with resolution 688 (1991) which is not based on Chapter VII. We are not asking for any enthusiasm for accepting the idea on the part of your Government but for an endorsement of the matter to let the refugees feel that they have the kind of protection or guarantee that will help them to return to their homes."

On 27 June 1991 the American Representative to the United Nations handed the Permanent Representative of Iraq a copy of a paper containing talking points expressing the position of the United States and the coalition States, which stated, *inter alia,* that the coalition governments have a strong interest in peace and order in Iraq, and they are prepared to reply militarily to Iraqi acts, which disturb peace, as the case may justify."

In this connection, it is worth recalling that during the weeks following the Anglo-American intervention in northern Iraq, the Iraqi Government succeeded in co-ordinating with the Executive Delegate of the Secretary General of the United Nations to repatriate the Iraqi Kurdish citizens who were forced to leave their homeland and take refuge in the mountains abroad. Although the situation settled down subsequently in the three Iraqi northern Governorates, which eliminated all the pretexts of the United States and the United Kingdom to continue with their intervention, they nonetheless continued with the imposition of the no-fly zone.

II- The No-fly Zone in Southern Iraq

The United States, assisted by the British and French Governments, continued its attempts to expand the scope of intervention in the internal affairs of Iraq and to seek to undermine its stability and threaten its national unity and territorial integrity.

To prepare the ground for those acts which ran counter to the Charter of the United Nations and the rules of international law, a meeting of the Security Council was held on 11 August 1992 to hear the Special Rapporteur on human rights in Iraq, Mr. Van der Stoel, in contravention of the modalities and rules of procedure followed in the work of the Organisation, especially in view of the fact that the work of the Special Rapporteur falls under the competence of the Economic and Social Council, and it is not part of his responsibility to report to the Security Council.

Mr. Van der Stoel's report contained a heap of unsubstantiated and untrue charges and accusations concerning violations of human rights in southern Iraq in addition to his false allegations about damage to the environment and the inhabitants of the marshes caused by Leader Saddam River Project.

Immediately following the hearing of this fabricated report, the Governments of the United States of America, the United Kingdom and France announced on 27 August 1991 the imposition of a no-fly zone south of the 32nd parallel on the pretext of protecting the Shi'ite Iraqi citizens in southern Iraq.

The Security Council adopted no resolution on that occasion nor did it give the American Government or any other Government any authorisation to take any military action of that kind.

Iraq rejected that no-fly zone decision and, on 27 August 1992, it declared in clear terms through an authorised official spokesman of the Revolution Command Council that it reserved its right as to the course of action it would take with regard to that aggressive decision and the methods it would use to put its rejection in force.

III- Extension of the No-fly Zones

In a letter addressed to President Saddam Hussein on 22 August 1996, Mr. Masoud al-Barzani, Chairman of the Kurdistan Democratic Party, stated that the city of Erbil was being subjected to a joint aggression by the group of Jalal al-Talbani and Iran, resulting in the martyrdom and wounding of many defenceless citizens and the destruction of their property. " The conspiracy is bigger than our capability," Mr. al-Barzani pointed out, "and we therefore request your Excellency to order the Iraqi armed forces to intervene to support us in repelling the foreign danger and putting an end to Jalal al-Talbani's conspiracy and his treason."

In the light of this letter and the explicit character of the Iranian military intervention, the Iraqi Government decided to provide support and military aid to Mr. Masoud al-Barzani. It also decided that the military actions be limited and kept within the framework of the provision of aid and support.

That action on the part of Iraq fell within the scope of its sovereignty over its own territory and the framework of its duty to defend its own people and repel any foreign aggression to which they might be subjected. This is a right that is assured by all international pacts and laws, and there is nothing to prevent a State from protecting its own citizens.

Taking advantage of those developments in northern Iraq, the United States used them as a pretext to launch missile attacks against Iraq in the south, with the result that many civilian installations were destroyed and many civilians were martyred and wounded.

On 3 September 1996, President Clinton announced that the decision to strike Iraq was taken in order to "punish Saddam Hussein for the act he committed and to limit his ability to threaten his neighbours and the interests of America". In the same statement, he pointed out that the American Administration had decided to extend the no-fly zone in southern Iraq in order to "deprive Saddam of control over Iraqi airspace from the borders of Kuwait to the southern suburbs of Baghdad; limit Iraq's ability to carry out offensive operations in the area, and safeguard the safety of our (American) aircraft enforcing the no-fly zone."

On the same date, i.e. 3 September 1996, the American State Department sent a letter to Iraq through the Permanent Mission of Iraq in New York in which it emphasised that the no-fly zone in the south imposed in 1992 had been extended from 32 parallel to 33 parallel with effect from the noon of 4 September (Baghdad local time). The letter pointed out that the current rules governing any Iraqi air activities in the area below parallel 32 would be applied to the extension area. The necessary steps were taken to ensure the safety of air- crews implementing the operations above the extension area, and any other Iraqi acts threatening peace and security would result in dire consequences.

Iraq's reply to that American action was quite clear: the President of the Republic of Iraq himself declared that Iraq would not recognise the parallels in question and that orders had been issued to its armed forces to engage any coalition aircraft flying in Iraqi airspace.

On 7 September 1996, the United States State Department sent a fax message to the Permanent Mission of the Republic of Iraq in New York in reply to Iraq's declaration. It stated the following:

"Your government has announced that it will not respect the no-fly zones imposed by the alliance and that it has issued orders to its forces to engage any aircraft belonging to the alliance flying in Iraqi airspace. The governments of the United States of America and the United Kingdom, therefore, demand that:

* Iraq not reinforce or introduce new surface-to-air missile systems, including mobile systems, south of the 33 degree latitude.

* Iraq not re-deploy surface-to-air missile systems that are currently south of the 33 degree latitude to new positions south of the 33 degree latitude.

* Iraq not repair or rebuild surface-to-air missile systems south of the 33 degree latitude which have been damaged or destroyed by coalition forces since 3 September 1996.

* We remind Iraq that any surface-to-air missile systems that illuminate and/or trace coalition aircraft with fire control radar will be considered hostile. In the event that you fail to comply with the stated demands you will be liable to face military action against the systems concerned."

Iraq announced its rejection of those illegitimate American demands.

It is significant to note that the Anglo-American pretext for imposing the southern no-fly zone in 1992 was allegedly to provide protection to the Shi'ite population of southern Iraq. With the extension of the said zone, however, that pretext has changed to be to limit the ability of Iraq to threaten its neighbours!

IV- Assessment of the Arguments

The alleged bases for the imposition of the no-fly zones put forward by the United States, which has the support of the United Kingdom, can be seen from the American talking points dated 28 and 31 December 1998 which were distributed in the capitals of the Security Council members.

The United States alleged that the no-fly zones in northern and southern Iraq were " established " in 1991 and 1992 respectively under UNSCR's 678, 687 and 688, which authorise " the U.S. and other coalition members to take the necessary action to deter or prevent the Iraqi repression of its civilian population that is addressed in resolution 688, which determined that Iraqi repression of its civilian population threatened international peace and security." It is further alleged that Iraq is " violating" the establishment of the zones and goes into listing various points to create the impression that there are in fact such violations.

The basic substantive point to be dealt with is clear and simple, namely whether the resolutions referred to by the United States do in fact authorise the so-called establishment of the no-fly zones.

It is quite clear that the position of the United States is completely unfounded. The most significant point to remember in this connection is that the provisions of resolution 678 (1990) have come to an end by the provisions of paragraph (33) of resolution 687 (1991) which declared that "upon official notification by Iraq to the Secretary General and to the Security Council of its acceptance of the provisions above, a formal cease-fire is effective between Iraq and Kuwait and the Member States co-operating with Kuwait in accordance with resolution 687 (1990)." In the following paragraph, which is the final in resolution 687 (1991), the Security Council confirmed that any forcible future measure against Iraq requires a new authorisation. Paragraph (34) of the resolution stated: " decides to remain seized of the matter and to take such further steps as may be required for the implementation of this resolution and to secure peace and security in the area." Consequently, it is legally baseless to allege any authorisation to use force against Iraq within a formal cease-fire situation declared by the Council and in the absence of any new authorisation.

In this connection, it is necessary to point out that even the Secretariat was not immune from tendentious interpretations, which fly in the face of common sense and the obvious provisions of resolution 687.

In the publication entitled " The United Nations and the Situation between Iraq and Kuwait, 1990-1996, with an introduction by the former Secretary-General", which was published by the UN Department of Public Information (DPI/1770), resolution 687 was outlined with the conclusion that " the provisions of resolution 678(1990) authorizing Member States to use ' all necessary means to uphold and implement' relevant Council resolutions ' and to restore international peace and security to the area' remained in force." What adds insult to injury is that the drafters of this document did not quote paragraph 1 of resolution 687 in full obviously because this will not enable them to make the above conclusion (See Section One, Introduction, paragraph 100, at p.33).

This legal interpretation was confirmed on two occasions in the Security Council. In the first place, on the occasion of the discussion in the Council on 9 April 1997, and in the 661 Committee on 18 March 1999, of the carriage of Iraqi pilgrims by Iraqi Airways to the Holy Lands, it was clear from the objections raised by an important number of Council members against the American position, as supported by the United Kingdom, to condemn the flight as being a violation of the resolutions of the Security Council, that the consensus of opinion amongst the rest of the members in general was that Iraq is not subject to an air embargo. Secondly, in the consultations of the Security Council which led to the adoption of resolution 1205 (1998) the United States and the United Kingdom failed in their attempt to include a provision in the draft resolution authorising the use of force against Iraq without prior recourse to the Council. Instead, the Council confirmed in paragraph (6) its decision " in accordance with its primary responsibility under the Charter for the maintenance of international peace and security, to remain actively seized of the matter." This was the compromise formula reached to confirm the necessity for recourse to the Council before any resort to force, and this was the understanding confirmed by many members during the official meeting of the Council held on 16 December 1998.

As for the American position that the imposition of the no-fly zones is a measure that conforms to Security Council resolution 688 (1991), such a position is also baseless. To begin with, the provisions of that resolution do not support this position. In addition, that resolution was not adopted under Chapter VII of the Charter of the United Nations, which is the only Chapter in accordance with which force may be used by the United Nations or on its behalf pursuant to a specific authorisation. Nor did that resolution contain any provision imposing a no-fly zone in Iraqi airspace. Moreover, using resolution 688 (1991) as a basis for the imposition of the two no-fly zones is incompatible with the provisions of that resolution. The second preambular paragraph of that resolution refers to Article 2 of the Charter of the United Nations, which precludes the United Nations from intervention in matters which fall essentially within the domestic jurisdiction of any State. Furthermore, in its seventh preambular paragraph, resolution 688 (1991) clearly reaffirms the commitment of all Member States to Iraq's sovereignty, territorial integrity and political independence.

Consequently, and on the basis of the above, the American position is legally baseless and should be dismissed. The United States is not authorised to prohibit, attack, challenge or maintain any act. It is also unauthorised to assign to itself the role of drawing up certain purposes to the no-fly zones in order to create the false impression that they were legal.

It is clear that there has been no authorisation to impose the no-fly zones from the Security Council, which is the only organ empowered under the Charter to deal with the maintenance of international peace and security. The Council has not authorised the taking of unilateral forcible measures against Iraq in the form of no-fly zones. As we have seen, no acceptable legal justification was presented by the powers maintaining the zones, and consequently the zones remain to be forcible actions against Iraq, its territorial integrity and national unity, in violation of the prohibition of the use of force under the Charter. Moreover, the powers maintaining the zones failed to indicate what authority has given them the power to undertake their so-called supervision of the application of resolution 688 (1991) in southern Iraq and to exercise the role of monitor of human rights in Iraq.

The facts make it clear that the imposition of the no-fly zones is a unilateral decision that has nothing to do with the United Nations and its resolutions. This was confirmed by the official spokesman of the United Nations, Goe Sills who, on 7 January 1993, stated that the imposition of the no-fly zone in southern Iraq was not based on any Security Council resolution.

It should be noted that the French Government suspended in 1996 its participation in the illegal actions in the northern no-fly zone. It has also confirmed this suspension in general as late as 23 December 1998.

The position of the United States and the United Kingdom in question have not been supported by two permanent members of the Security Council, namely Russia and China, as well as a number of other members of the Council. This explains why the United States and the United Kingdom have not been able to get the authorization from the Council to their illegal act.

It is important to put on record certain statistics. For the period 28 August 1992 to 6 February 2001, the total number of air violations in the southern no-fly zone has reached 155622 violations. For the no-fly zone, the total number of air violations, for the period 9 May 1991 to 6 February 2001 reached 49206. In regard to air sorties, the total number for the period 18 December 1998 to 6 February 2001 reached 29124: 6086 from Turkey, 8294 from Kuwait and 14965 from Saudi Arabia. For the period 18 December 1998 to 6 February 2001, the number of martyrs reached 340, and those injured 1000.

On the basis of the above, the imposition and the enforcement of the no-fly zones in question is an internationally wrongful act in flagrant violation of the Charter and well - established rules of international law. They constitute use of armed force against Iraq's sovereignty, territorial integrity and political independence contrary to the Charter. They violate the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the General Assembly in resolution 2625 (XXV) on 24 October 1970, which was considered by the judgment of the International Court of Justice in the Nicaragua Case in 1986 as reflecting customary international law. They also amount to a continuous act of aggression under the Definition of Aggression adopted by the General Assembly in resolution 3314 (XXIX) on 14 December 1974.

As such, the United States and the United Kingdom bear the full international responsibility for their illegal actions. Moreover, the Governments in the region, namely, Kuwait, Saudi Arabia and Turkey, which render facilities and support to the United States and the United Kingdom to enable them to impose and enforce the no-fly zones share with them the same violation and consequently the same international responsibility.

At the same time, Iraq is fully entitled under the Charter and international law to exercise its legitimate right to self-defense against such a continuous act of aggression.

Compensation

The Security Council had dealt with the issue of compensation in resolutions 674 (1991), 686 (1991) and 687 (1991). The common denominator of the provisions of the three resolutions is that the principle of compensation has to be implemented under international law.

Iraq accepted the principle of compensation in that form. Since the rules of international law were to be the basis of compensation, Iraq hoped that the mechanism for the implementation of the principle was also to be based on the same rules.

Paragraphs 16 to 19 of resolution 687 outlined the provisions on compensation. In paragraph 16 Iraq was considered " liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

Accordingly, the Council widened the scope of compensation previously determined as one of the conditions of cease-fire in resolution 686. This is clear from the addition of environmental damage and the depletion of natural resources hitherto not mentioned.

In paragraph 19, the Secretary-General was requested to report on the mechanism of implementing the principle of compensation. To that effect, paragraph 19 listed what was requested of the Secretary-General, namely recommendations on the creation of a Compensation Fund, a Commission to administer it and a programme to implement the decisions on compensation, which covered practically all aspects of the work to be done, including the level of Iraq's contribution to the Fund. In this latter respect, the Secretary-General was instructed to recommend a percentage of the value of the exports of petroleum and petroleum products from Iraq taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy. In resolution 692 (1991), the council approved the report of the Secretary-General (document S/ 22559) and the United Nations Compensation Commission (UNCC) and the Compensation Fund were established to process compensation claims. In a further note dated 30 May 1991, the Secretary-General recommended the percentage in the form of a ceiling of %30 and the Council approved that recommendation in resolution 705 (1991).

The method adopted by the Security Council is unprecedented in the history of international law, and at variance with normal settlement practices usually adopted after the cessation of hostilities and the methods of claims settlement adopted by sovereign States. This practice rests upon the basic principle of the sovereign equality of States.

There are fundamental objections to the method of establishing the UNCC, the characteristics of its procedure and the substantive rules and principles it applies. The central problem lies in the fact that the Security Council as a political body, albeit with the support of a large number of States interested in compensation, assumed both the judicial function in substituting the normal forms of international disputes settlement by an administrative and political process (which it controls), as well as the legislative function by replacing traditional norms of State responsibility in international law with some different rules, applied by the UNCC. The Security Council has no authority under Chapter VII of the Charter, to do this.

In comparison with other settlements of compensation claims hitherto known and well-established in State practice, the punitive and exaggerated nature of the compensation regime imposed on Iraq seems surprising. The compensation scheme, compared to the continued embargo on Iraq, will run short of the ability to pay, impede reconstruction in the aftermath of the destructive use of force by the coalition forces and impoverish Iraq's coming generations to the extent of reaching a regime of economic slavery.

Unfortunately, the settlement envisaged for Iraq contains clear elements of the so-called "peace treaties", although it is not based upon a peace treaty, but on Security Council resolutions, which does not make the matter any better.

The compensation system is based on manifestly political grounds, and not legal considerations and due process of law required by principles of natural justice. The treatment accorded to Iraq violates the principle of proportionality and international human rights of the Iraqi civilian population.

The United States was the main driving force behind the establishment of the whole regime under consideration. In fact, statements by officials of the United States have made this fact very clear. In fact, statements by officials of the United States have made this fact very clear. On this fact, Ronald J. Bettauer, the Assistant Legal Adviser for International Claims and Investment Disputes at the US Department of State wrote the following

> **" It is hard to imagine a better recent example of the U.S. Government playing a fundamental role in the creation of a new international institution. The United States was the driving force behind the relevant provisions in Security Council resolutions that established the Commission, developed drafts of and pressed for the adoption of all of the key decisions of the UNCC Governing Council during its early period, and worked assiduously behind the scenes to ensure that the Commission would become an effective body. Like other countries, we were concerned that the Commission not become a body at which matters were debated at length, but with little real accomplishment. We made extraordinary efforts to achieve major substantive progress at each of the early Governing Council meetings, in exceptionally short periods of time. The other member states of the Council shared our goals and cooperated in this endeavour. As a result, I think we were successful. The U.S. Government was well prepared to undertake this task. Since 1981, we have been involved in arbitration at the Iran-United States Claims Tribunal in The Hague. In addition, the United States has had extensive experience both in the settlement of claims and the adjudication of claims before the U.S. Foreign Claims Settlement Commission. The importance of developing an appropriate claims procedure to deal with claims against Iraq was at the forefront of our minds, and we were in a position to draw on this experience. We were determined to make sure that the Commission avoid many of the procedural and substantive problems that faced the Tribunal, and I believe we largely succeeded."** [1]

On the Secretary-General Report pursuant to paragraph 19 of resolution 687, Battauer had this to say:

> **" The Secretary-General's report pursuant to paragraph 19 of resolution 687 made recommendations both on an institutional framework for the claims process and for measures to implement adoption of resolution 687, the UN Secretariat worked hard on preparing this report and consulted extensively with the United States and other concerned members of the Security Council. W, gave extensive comments. In the end, the Secretariat accepted thl United States's suggestions concerning the essential elements o the institutional framework-which would become the United Nations Compensation Commission and the Compensation Fund."**[2]

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[1] Ronald J. Bettauer, Establishment of the United Nations Compensation Commission: the United States Perspective, in The United Nations Compensation Commission, Thirteenth Sokol Colloquium, Esdited by Richard B. Lillich, pp 29-30.

[2] *Ibid* pp 32-33.

In regard to the decisions of the Governing Council, Bettauer stated:

> **" Indeed, most of the decisions of the Governing Council to date have developed on the basis of such iterative refinement of United States proposals or working papers. The experience over the prior thirteen years at the Iran-United States Claims Tribunal played an important role in the United States Government's assessment of both the substantive and procedural rules that would be desirable for the UNCC and those that had to be avoided."** [3]

Iraq agreed to accept, in principle, its liability as required by Security Council resolution 686 (1991), but it did not accept the formula set out for enforcing this liability as imposed by the Security Council in the establishment of a reparations regime administered by the UNCC under resolution 692 (1991) and the subsequent decisions of the Governing Council which exceed, under any consideration, the powers of the Security Council under the UN Charter. It is important to refer to the sudden change in the language of resolution 687 (1991) on Iraq's liability and to the unexpected text under which that liability was enforced, compared to resolution 686 (1991). The said text were further amended in the Secretary-General's report of 1991 and the implementing resolution 692 (1991).

Iraq has put its protest against the conditions of the imposed settlement and against the procedure of the Commission on record, in the two letters dated 6 April 1991 addressed by the Iraqi Foreign Minister to both the Secretary-General and the President of the Security Council concerning resolution 687 (1991) (document S/22643) and in the letter dated 27 May 1991 to the President of the Security Council on resolution 692 (S/22643 of 28 May 1991) as well as in the letter sent by Iraq's Permanent Representative to Secretary-General on 20 May 1991 on resolution 692 (S/22629 of 21 May 1991). This also bars the application of the international law doctrines of acquiescence or the principle of estoppel. Iraq has continuously repeated its objections in principle against the unfair procedure of the UNCC in an attempt to safeguard its interests under circumstances imposed upon it.

Resolution 687 clearly refers to Iraq's liability "under international law". Even if one assumes that the Security Council is acting within its authority under Chapter VII, this imposes a requirement that the compensation process be carried out in accordance with the principles of international law. Foremost among these are the rules of natural justice and the observance of transparency by the Commission in its work.

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[3] *Ibid.*, p.38.

To date, Iraq has not missed any opportunity to set out its objections to the system of compensation imposed upon it whether before the UNCC or the Security Council. Notably, it presented its views in detail in the Procedural Request presented to the Panel of Commissioners in the Well Blowout Control Claim (UNCC Claim No.1798909) presented by the Kuwait Oil Company on 27 July 1996. The Panei declined to look into the Request on the ground that the question fell within the competence of the Governing Council. Iraq went before the Governing Council to present its views. It was not with ease that the Council gave Iraq merely forty- five minutes to present its case during its twenty-second regular session (14 and 15 October 1996). The end result was a statement issued by the Chairman of Governing Council, which states in essence that the matters raised by Iraq fell within the competence of the Security Council. The report of the Governing Council was referred to the Security Council (document S/1996/893 dated 31 October 1996).

The Security Council shelved the whole question. Last summer, however, the Oil Claims Panel of Commissioners recommended payment of a huge amount of compensation, amounting to $ 15, 9 billion to the Kuwait Petroleum Company (KPC) in connection with two claims (Nos. 40004439 and 4003197). Despite the strong pressures of the United States and the Secretariat, the Governing Council could not, in view of the enormity of the money involved, reach consensus on the recommendation during two meetings held in June 2000, and it was decided to take up the matter again during the thirty-seven regular session of the Governing Council to be held in Geneva from 19 to 28 September 2000, which was apparently the last deadline for the consideration of the award.

The issue was widely publicised in the media at the time, and specially the oil circles media. Then, the question resonated in the Security Council. Russia raised the question pointing out the need for assessing the situation in view of the enormous deductions for compensation while the humanitarian situation in Iraq continues to deteriorate. Although the Russian view was supported by China, Tunisia, Namibia, Bangladesh, the Ukraine and Mali, The American and British Representatives, supported by the representatives of Canada and the Netherlands objected strongly to the Russian proposal. They argued that the question is technical and it should not be discussed in a political body

Neither the Security Council, nor the Governing Council of the UNCC, looked into the unjust situation imposed upon Iraq contrary to international law. One of the outrageous examples is the scandalous way in which the Governing Council handled Iraq's Procedural request in 1996 and the manner in which the Security Council worked out a so-called package deal last summer and the subsequent actions on the Governing Council on it.

This episode in the work of the Security Council and the UNCC provides an incontrovertible piece of evidence that the work in the compensation field is purely political, lacks any element of fairness and ignores the principle of due process of law required by natural justice. But this is not the only example of injustice suffered by Iraq throughout the existence of the UNCC. On this, examples abound. The following are among the samples:

- The Compensation Commission adopted the method of sampling in settling individual claims in categories A, B and C which is not the approved procedure under international law which require proof and causation in respect to every claim.
- The Secretariat of the UNCC has been assigned a decisive role in processing claims which transcend normal secretariat tasks. In fact, the Secretariat performs substantive functions as if it were a party to the claims.
- Iraq had to bear the exorbitant administrative expenses of the Secretariat.
- There has not been any guarantee against duplicity of claims. An example in point can be seen from the Kuwaiti Claims of return of property referred to in the relevant section on the subject.
- Iraq's liability rested on presumptions rather than proof.
- Initially, the Governing Council considered damages resulting from sanctions as not covered by compensation, then it reversed that decision and considered them compensable.
- The Governing Council widened the scope of liability by deciding the payment of compensation with interest.
- Having approved the plan submitted by the Secretariat to complete the whole work of the UNCC by 2003, the

Governing Council in effect decided in favour of speed rather than justice.

- The Governing Council resorted to extend deadlines for the submission of individual claims, which resulted in increasing the number of those claims.
- The UNCC is not empowered to conclude agreements with Governments of member States regulating questions pertaining to payment of debts as it had done with Egypt, because resolution 687 excludes the question from the field of compensation.
- The Governing Council approved in certain cases compensation in an amount far exceeding that recommended by the Commissioners, as was the case with Governmental claim No.41 submitted by the Kuwaiti National Committee on POW's and Missing Persons. While the Committee claimed $ 58,452,768 million, the Council awarded it 153,462,000 million, i.e., more than twice the sum claimed.
- Despite the fact that the UNCC is not empowered to deal with Iraqi debts incurred before 2 August 1990, the Governing Council considered them compensable if the claimant had performed his contract three months before that date.
- The Governing Council extended the period for the liability of Iraq by five months after the end of hostilities.
- The Secretariat failed in certain cases in verifying claims. Certain States, for example Sri Lanka, India, Yugoslavia and Bosnia and Herzegovina, noted that the Commission had compensated claimants twice for the same claim in 575 cases.
- In a statement to the press, the Governing Council requested certain Governments to which had not distributed compensation funds to their beneficiaries to repay them back to the Compensation Fund after the expiration of one year from the date of receipt.

What we have indicated above does not represents the standards of international law for processing State liability. The whole regime of the UNCC is a political system imposed upon Iraq. It is intended to be a vindictive punishment inflicted by certain States whose sole interest is financial gain rather than the administration of justice.

Iraq shall continue to adhere to its position. It insists on redressing the injustice inflicted upon it by the compensation regime. Nothing short of re-establishing legality under international law will be acceptable.

The Humanitarian Program

On 14 April 1995, the Security Council adopted, on the basis of an American endeavour, which was covered by a draft resolution presented by Argentina, resolution 986 (1995) under which Iraq was allowed, subject to several conditions, to sell oil at a worth of US$ 2 billion (one billion of US dollars every three months) to fund the purchases of humanitarian goods as well as the various activities of the United Nations. On 6 February 1996 talks commenced with the UN Secretariat on the implementation of a formula on food-for-oil in consonance with resolution 986. The talks were crowned with the Memorandum of Understanding signed on 20 may 1996 between the Government of Iraq and the UN Secretariat, under which rules and procedures were agreed upon for the purchase and distribution of food, medicine and other essential civilian needs for the people of Iraq.

The arrangement of the Memorandum of Understanding has run thus far into nine phases. More than four years have already passed on its implementation since it was signed. The Government of Iraq has been keen to adhere to the provisions of the MOU as a temporary and exceptional measure aimed at alleviating the sufferings of the people of Iraq from the embargo, and continue at the same time to call for its full lifting. The Government of Iraq has co-operated fully with the UN agencies in discussing and determining the requirements of the sectors covered by the distribution plan in the hope that these requirements will be made available within the time-limit of each phase in order to meet the urgent needs of the people of Iraq.

Unfortunately, there are reasons which hindered this program from achieving its humanitarian goals. The complicated nature of the MOU procedures and the American-British intervention have emptied the MOU of its human content, turning it into a continuous depletion of Iraq's resources without improving the human situation of the people of Iraq, or as a consequence, the deterioration of the humanitarian situation of the Iraqi people continued. This proves more than ever that there is no alternative to lifting the sanctions in order to restore the normal economic situation in Iraq. The following are the most important reasons why the MOU has not met even the minimum essential humanitarian needs of the people of Iraq.

1- Inequitable Distribution of Revenues

As of 14 February 2001, the MOU revenues amounted to more than US$ 39 billion of which US$ 13.7 were deducted for purposes other than the humanitarian objectives for which the programme was established. These deductions are: US$ 11.7 billion for compensation, US$ 1.1 billion for UN expenditure. Iraq, however, has received only humanitarian goods and supplies for the value of US$ 9.9 billion. US$ 11.4 billion are kept in the French bank (BNP) holding the Iraq account, which represent the value of contracts, which are either put on hold by the United States and the United Kingdom, pending at the Iraq Programme office (OIP) or are waiting for letters of credit.

2- Hold policy by the United States and United Kingdom

From the very beginning of the MOU, the United States of America and the United Kingdom have deliberately worked to empty the MOU of its humanitarian purposes in order to deeply hurt the people of Iraq and aggravate their sufferings. This policy has been demonstrated by putting on hold the contracts of humanitarian goods for political purposes, although those contracts have met the provision established by the UN Secretariat according to document (S/1998/92), paragraph 4-b-(ix) of which stipulates: "The UN Secretariat will examine and review the applications. It will circulate all those applications that meet the procedures established by the Committee and conform to the distribution plan." Despite the fact that all other members of the 661 Committee have approved those contracts, the reasons presented by the American and British representatives to put the contracts on hold are ridiculous. For instance, they put some contracts on hold under the pretext that they are dual-use items subjected to the provisions of resolution 1051, while the Office of Iraq Programme stresses to the contrary. Or, they put some contracts on hold under different pretexts, while they approve other contracts for similar items, which happen to be from another origin. This indicates that they have political problems with the State that submits the contracts. They even put on hold a contract for live bulls (contract no. 600787) under the pretext that it is of dual-use nature. Most harming of all is that they put on hold some contracts that constitute with other approved contracts one project, thereby depriving Iraq of making use of the goods and equipment covered by the approved contracts.

Despite the international protest against such American and British inhuman conduct, including the resignations of Mr. Dennis Halliday, Mr. Hans von Sponek and Mrs. Juta Burghardt, the Representative of the World Food Programme in Iraq, the American and British policy of putting the contracts on hold is continuously increasing. As of 23 February 2001 the total of the contracts put on hold for phases 4 to 8 of the MOU is 1650 contracts, which worth US$ 3.3 billion. Although the Security Council appealed to the 661 Committee, by paragraph 9 of resolution 1330 (2000) to reduce the number of contracts put on hold, the United States of America and the United Kingdom paid no attention to that appeal.

3- Selective Dealing with Contracts

Since the very beginning of the program, there has been a selective policy pursued by the representatives of the United States and the United Kingdom in the 661 Committee in dealing with contracts for humanitarian goods. While approval is granted to the contracts of goods and supplies for the Iraqi three northern governorates (Arbil, Duhok and Sulaimania), which are submitted by the UN Specialized Agencies implementing the MOU in those governorates on behalf of the Government of Iraq, the US and British representatives put on hold contracts of similar commodities for the central and southern governorates of Iraq, which are submitted by the Iraqi Ministries. The purpose of this practice is to make a false conclusion that the Programme is working in the north while it suffers failure in central and southern Iraq, where its implementation is supervised by the Government of Iraq.

4- Mechanism of Contracts Submission

The chain of process through which a contract passes from the conclusion stage with the supplying companies to the arrival of goods in Iraq is long and complicated. This causes considerable delays in the arrival of humanitarian supplies in Iraq. The contracts are withheld for long periods by the Office of Iraq Programme, and they are not presented to the Committee under many pretexts, including the examination, evaluation and verification of these contracts. When they are submitted to the 661 Committee many of them are put on hold by the United States and the United Kingdom under different pretexts the least of them is seeking further information about their use and end user, or the need for further technical specifications of the contract items are not included into the distribution plan or that the items of the contract are covered by resolution (1051) list.

Although the (661) committee has authorized the OIP to approve a list of items in certain sectors, the U.S. and U.K. representatives in the (661) committee have emptied this rule of its content by refusing to include essential humanitarian items to the list under the pretext that they might have been included in the list of resolution 1051, or they are not humanitarian items. Thus, the list of items to be approved by the OIP have become very small. This applies to items in the education, higher education, agriculture, water and sanitation sectors.

5- Delays in L/C opening and payment to the suppliers after the arrival of goods.

There is another route through which the arrival of humanitarian supplies in Iraq is deliberately delayed, namely the opening of letters of credits (L/C) by the Bank (BNP) for the approved contracts. The opening of L/C by the Bank takes a long time due to the deliberate long and complicated routine between the French Bank and the U.N. treasurer. This routine takes weeks or even months. Long delays also happen in the payment of the contract values to the suppliers after the arrival of goods, which incited many major companies to refrain from signing contracts with the Iraqi side during the later phases of the MOU.

6- Exaggerated allocations for 2.2% and 0.8% accounts

Resolution 986 has provided for the payment of the operational and administrative costs by the United Nations in respect of the activities related to the MOU. The Secretariat presented its estimated expenditure at the beginning of phase 1 of the MOU, which was US$ 44 million out of the US$ 2 billion revenues of that phase. In his report of 25 November 1996 onthe implementation of resolution 986(S/1996/978), the Secretary-General transformed the above sum to a percentage in order to make it easy for making the deduction, the percentage was 2.2%. When the ceiling of the MOU revenues was increased since phase 5 to reach more than US$ 9 billion, the deduction for operational and administrative costs remained at the same rate of 2.2%, although the expenditure requirements have not increased substantially. Therefore, the amounts of money have accumulated in this account despite the excessive squandering and irrational expenditure by the Office of Iraq Programme and in spite of the fact that the costs of assets such as offices, vehicles and computers have been covered by the first phases. Now the financial surplus in this account is more than US$400 million. Instead of correcting this mistake through the reduction of the actual operational and administrative costs, the UN resorted to a circuitous solution by transferring some amounts of money from the account of 2.2% to the 53% account designed for the purchase of humanitarian goods (Article 9 of Resolution 1330), a solution that does not fully return the funds to be spent for humanitarian purposes, but rather it leaves it to the Office of Iraq Programme which is still retaining hundreds of millions of dollars under the pretext of (Emergency Account).

What is said about the 2.2% account is true for the 0.8% account allocated to cover the costs of the UNSCOM, where the funds transferred for this account are allowed to multiply, although all the activities of that Commission had stopped as a result of the aggression launched against Iraq by the United States of America and United Kingdom on December 16, 1998, and neither UNSCOM nor its successor, UNMOVIC, has a role to play. Despite this fact, the deduction of that percentage continues and this constitutes an unjustifiable accumulation of funds in this account and a clear plundering of Iraq's resources.

7- Deduction for Compensation

Operative paragraph (2) of Security Council resolution 705 (1991) decided that the compensation to be paid by Iraq shall not exceed a ceiling of 30% of the annual value of the exports of petroleum and petroleum products from Iraq.

From the very beginning of the MOU to the end of phase 8, and despite the objection by the Government of Iraq, the deduction is arbitrarily continued at the maximum rate, i.e. 30%. The purpose of this conduct is clear, namely to seize as much funds as possible at the expense of satisfying the humanitarian needs of the Iraqi people, which represent supposedly the objective of the program. Though resolution 1330 (2000) has reduced this percentage to 25%, the deduction is still too high when the urgent needs of the Iraqi people are taken into consideration.

8- Principle of Performance Bonds

The principle of performance bond in commercial dealings is an internationally established principle which ensures fulfillment of the supplier's obligations to the purchaser.

On several occasions, this subject was raised in the 661 Committee by Iraq, the Executive Chairman of the Office of Iraq Programme and by certain members of the Security Council, the last of which was during the meeting held on 18 January 2000. While they confirmed the legitimacy of the request of Iraq to approve the principle, the American and British representatives rejected it under different pretexts such as studying the subject technically. This rejection resulted in depriving Iraq arbitrarily of the right to seek the application of an internationally approved standard of commercial contracts. This, in turn, led to encouraging many contracting companies to supply materials that are not identical to the specifications agreed upon in the contracts, or incomplete material and even foodstuffs not fit for human consumption.

9- Financial mismanagement

Paragraphs 71–81 of the report of the Secretary-General on the activities of the Internal Monitoring Services Office contained in document (A/55/436), under the title: (the Office of Iraq Programme), referred to financial and administrative breaches committed in the accounts of the Office of Iraq Programme, the UN Humanitarian Coordinator's Office in Baghdad and the offices of the UN programmes and agencies working in Iraq within the framework of the MOU. Paragraph (73) mentioned that an amount of US$ 1.97 million had been paid, contrary to established rules, to the company contracted with the United Nations to deploy inspection agents on the Iraqi border points so as to monitor the entry of goods into Iraq. The said company had deployed its officers as one group long before the arrival of the imported goods in Iraq under the MOU, whereas the UN Department of Political Affairs, which directed the programme at that time, had recommended that those elements should be deployed in stages to be sent upon the arrival of the humanitarian supplies. This action has resulted in an unjustified waste of funds.

Paragraph (74) mentioned that US$ 1.4 million was spent to cover the expenditures of (1800) travel days for the officers of Cotecna Company, which they spent outside their offices, whereas the contract concluded between this company and the UN Secretariat did not specifically provide for payment of travel time.

Paragraph (75) also indicated that the financial and administrative procedures as well as the operational arrangements of the UN Humanitarian Coordinator's Office in Baghdad had not been effective and there had been several breaches of procurement actions.

Paragraph (76) mentioned that the Office of Iraq Programme had provided the Coordinator office in Baghdad with an amount of US dollars (566,025) to buy aid in the winter of 1999-2000 for the internally displaced persons in northern Iraq. The Supervision Office found that "the purchase measures for these needs had deviated from established procedures" and " the amounts of money paid by the mission were, on average, 61% higher than the prices obtained by the Internal Supervision Services Office."

Paragraphs 79, 80 and 81 addressed the activities made by the UN Specialized Agencies implementing the MOU on behalf of the Government of Iraq in the three northern governorates. They indicated that those Agencies are obliged to submit their accounts for review. They are also obliged to inform the Office of Iraq Programme about the relevant findings. In spite of this " so far, the proceedings of the comprehensive review have not been fully coordinated and have not been properly reported."

These paragraphs clearly indicate malpractice described by the Secretary-General, which demonstrates plundering and manipulation of funds, which Iraq badly needs to cover the costs of purchasing the materials and goods necessary for improving the humanitarian situation in Iraq.

10- Examples of failure of the Program in the North

A- The Demining Programme in the Three Northern Governorates

The review of the operation of this programme shows complete failure and the great waste in the UN activities concerning the implementation of the MOU. Up till now, the funds allocated for the programme amounted to more than US$ 80 million, while only (3450) mines have been removed. This means that the removal of each mine costs more than US$ 22000 (20 times more than the average). This very high cost is caused by many factors, such as the large army of what is called (experts) working in the project, their salaries, movements and splendid cars and communication devices that amounted to 6 devices per one person, in addition to their computers and other administrative supplies. During November and December 2000 only, the Ministry of Foreign Affairs received visa applications for (63) International experts to work for the project. Further, (28) dogs were brought into Iraq so as to help in detecting minefields, which resulted in additional expenditures such as appointing a trainer and a holder for each dog, and a special transport car for every two dogs. In addition, tons of food for those dogs were until recently imported from abroad. These facts led the UN Secretary General to indicate in one of his reports that the process of demining in northern Iraq might extend for 75 years.

B- **Electricity Sector in the Three Northern Governorates**.

The United Nations has entrusted the UN Development Programme (UNDP) and the UN Department of Economic and Social Affairs (UNDESA) with the task of following up the electricity sector in the three northern governorates. The miserable shape of this sector in the said governorates has been diagnosed as a result of the abnormal conditions of the sector as well as the lack of technical expertise to maintain this sector.

An amount of US$ 619 million has been allocated to rehabilitate the electricity sector in the north during phases 1-8 of the MOU.

According to the information received by the Iraqi Electricity Authority, activities carried out by UNDP to rehabilitate the electricity sector have not been properly conducted despite the huge financial allocations and the great number of technicians brought in from abroad (Their total number reached 431 technicians for last year only). However, the situation of electricity in the said three governorates has remained unchanged until now, and the bulk of the UNDP activity has simply been in the stage of assessment activity, suggesting unworkable solutions. According to the Iraqi Electricity Authority, this situation emanates from the following reasons:

- The UNDP's projects cannot be implemented in the absence of central planning for the Electricity System in Iraq, and in the absence of the goal of connecting the electrical power network in the three northern governorates with the national network.

- The project does not include a comprehensive plan to rehabilitate the electricity sector in the north within a certain explicit time-limit. Rather, it has included different projects to improve the distribution network and install diesel generators, which add no generating capacity to the basic work of the electricity system.

- The volume of work to be implemented has been greatly exaggerated, a matter that led to allocating large amounts of money without any justification whatsoever. There is also exaggeration in assessing the costs, which reach three times more than those concluded by the Iraqi Electricity Authority.

In a meeting with the Director of the Iraqi Electricity Authority held on June 19, 1999, The officials of OIP admitted that the Iraqi Electricity Authority is more efficient than UNDP to implement projects in the northern region. They also admitted the failure of their efforts to improve the electricity situation there, and stated that the majority of local population prefers reconnecting the electricity network in the north with the national grid. Nevertheless, UNDP has purchased three 20 megawatt diesel generators despite the Iraqi Electricity Authority's disapproval for several reasons, including that diesel generators are considered old technology that pollutes the environment, in addition to the difficulties of supplying them with diesel fuel continuously.

In paragraph 103 of his report on the end of phase 8 of the MOU (S/2000/1132), the Secretary-General pointed out that in the governorates of Duhok, Sulaymaniya and Arbil, the total supply of electric power is still at a critical point and that the citizens in Sulaimaniya, except for the essential services, get electrical power only for two hours a day, while the citizens in Arbil are deprived of it with the exemption of emergency generators.

The foregoing clearly indicates the failure of UNDP in improving the electricity situation in the northern region.

11- Iraq's Request to Diversify the Banks Holding Iraq's Account

Iraq has requested on many occasions, the last of which in the letter addressed by H.E. Mr. Mohammed Said Al-Sahaf, Minister of Foreign Affairs, to the UN Secretary-General on 4 January 2001, to diversify the banking activities of the MOU to more than one bank. Nevertheless, the treasurer exercises a policy of procrastination and prevarication in respect of this subject in order to delay the diversification of banking activities. At times, the treasurer asks the Iraqi competent authorities to nominate a number of banks and at other it claims that it wants to study the capabilities of those banks, and then it requests Iraq to nominate more banks so as to achieve competition and flexibility in selecting the best one, and so on.

Instead of accepting the Iraqi Government's proposal, the UN Treasurer has chosen to distribute investment, rather than banking activity, to a number of banks. By doing so, it has turned the Iraqi proposal as a whole into mere transference of the accumulated credit to more than one bank. Correspondences are still going on with a view to choosing certain banks in a number of countries, but no decisive procedure to satisfy the proposal of Iraq has been taken yet.

12- Payment of Iraq's dues to the UN budget

Since 1995, Iraq has requested to be allowed to pay the arrears of its contributions to the UN budget from its frozen assets or from its oil revenues under the MOU. Nevertheless, all that is achieved in this regard has been paragraph 8 of resolution 1330 (2000) which expresses the Council's willingness to approve this matter provided that " the Government of Iraq cooperates in the implementation of all the Security Council resolutions." This result has been an outcome of American abuse and reflects American hegemony on the decision-making in the Security Council and the 661 committee. The funds are available in the Iraq account, and the United Nations suffers from a financial crisis and calls upon member States to pay their contributions, thus there is no reason for the 661 committee not to approve Iraq's request to pay its dues to the U.N. and other International Organization from its revenues.

13- Violation by the Office of Iraq Programme and the UN Personnel of their Obligations under the Charter and the MOU

The MOU implementation has resulted in the presence of hundreds of U.N. officials in Iraq. The Government of Iraq has registered many serious violations of Iraq's national and economic security and of the Iraqi laws by the Office of Iraq Programme and the UN personnel. The following are examples of these violations:

1. The Office of Iraq Programme and some of the UN agencies working in Iraq have circulated statements and political positions of the agent cliques in northern Iraq.
2. Some of the UN agencies working in the Iraqi three northern governorates have cooperated and dealt with illegal non-governmental organizations which illegally entered Iraq with a view to undermining Iraq's security and territorial integrity under the cover of humanitarian activity.
3. Some of the UN personnel have smuggled antiques and valuable property out of Iraq.
4. Some of the UN personnel do not respect the values of the Iraqi society, norms and traditions.

Conclusion

All the abovementioned obstacles cannot establish an effective regime to meet the humanitarian needs of the people of Iraq. Thus, it is not surprising that the level of implementation of the distribution plans is low. The Secretary-General's report of 1 September 1998 (S/1998/823) stated that the rates of implementation of phases I, II and III up to 31 July 1998 were as follows:

The 15 governorates		The 3 northern governorates	
Food	79%	Medicines	20%
Health	16%	Medical equipment	38%
Water	16%	Water	26%
Electricity	22%	Electricity	2%
Agriculture	22%	Agriculture	33%
Education	14%	Education	20%
		Resettlement	20%
		De-mining	68%

As for phases IV to VI, the picture produced by the Secretariat of the UN in Annex III of document S/1999/896. As of 15 August 1999, the status of the contracts put on hold and the pending contracts for humanitarian supplies to the governorates of the center and south and the three governorates of the north respectively, as well as the contracts of spare parts for the oil industry is as follows:

Center/South Governorates	Phase IV		Phase V		Phase VI	
	Number	Value	Number	Value	Number	Value
Humanitarian supplies						
Hold	26	$55 883 729	174	$297 508 166	5	$8 245 502
Pending	0	$ 0	20	$20 493 197	2	$17 850 000
Oil Spares						
Hold	96	$40 995 263	166	$83 063 006	0	$ 0
Pending	1	$715 000	20	$9 993 000	0	$ 0
Northern Governorates	Phase IV		Phase V		Phase VI	
	Number	Value	Number	Value	Number	Value
Hold	10	$505 462	4	$857 240	0	$ 0
Pending	0	$ 0	0	$ 0	9	$8 556 951

The number of held contracts in later phases has increased as mentioned in Paragraph(2). This is the United Nations Humanitarian Programmeme for alleviating the sufferings of the people of Iraq resulting from the coalition war and the comprehensive embargo. Indeed, it is unimaginable to conceive a better system of internationally organised squandering of the financial resources of a sovereign member State of the United Nations! Emerging from the review of the implementation of this program is that it has failed in addressing the most basic humanitarian needs of the Iraqi people, it has wasted enormous Iraqi revenues and thus there is no alternative than the lifting of the sanctions immediately.

Demarcation of Boundaries

The Security Council dealt with the border issue under Chapter VII of the Charter, thereby setting a precedent hitherto unknown. It is for this reason that Cuba voted against resolution 687(1991) while Ecuador and Yemen abstained.

It is to be recalled at the outset that the Security Council had called upon Iraq and Kuwait in resolution 660 (1990) " to begin immediately intensive negotiations for the resolution of their differences " amongst which the settlement of the boundary issue is one of the most important. With the above-mentioned provisions of section A, the Security Council adopted a different approach altogether. This was done despite, first the fact that the Council had earlier concentrated on Iraq's non-acceptance of resolution 660 (1990) and all subsequent resolutions as a condition for the use of force against Iraq in accordance with resolution 678 (1990), and, second the consideration by the Council, after the commencement of hostilities, that such acceptance by Iraq was a precondition for the cessation thereof, a situation that was eventually regulated by resolution 686 (1991).

On the other hand, it is to be observed that the Security Council has without precedent involved itself in the question of the boundary between Iraq and Kuwait through section A of resolution 687 (1991) not only by imposing the ' delimitation ' formula, but also by imposing the ' bases ' and the 'manner' of the " demarcation " of the boundary.

As for the " bases " of demarcation, the Security Council imposed the "sources " thereof by using the term " appropriate material " and including therein a British map drawn in 1989-1990 by the United Kingdom Director- General of Military Survey and circulated as a document of the Security Council upon the request of the Permanent Representative of the United Kingdom to the United Nations in his letter of 28 March 1991, i.e. exactly five days before the adoption of resolution 687 (1991).

In regard to the " manner " of demarcation, the Security Council called on the Secretary- General in paragraph 3 of resolution 687 (1991) " to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary " in accordance with the bases of demarcation which it had imposed, and to present a report to the Council within one month.

The Legal Counsel of the United Nations presented the draft report of the Secretary- General to the Permanent Representative of Iraq to the United Nations in New York on 17 April 1991. Iraq presented its comments on the draft in the letter dated 23 April 1991 from the Minister for Foreign Affairs addressed to the Secretary- General (document S/22558, Annex II, Enclosure). The comments of Iraq can be summarized as follows:

- The unavailability of any legal basis for the Security Council's consideration of the map referred to in resolution 687 as a basis for demarcation because Iraq was not involved in the drawing thereof, and has not recognized, or otherwise acknowledged it in any way. Consequently, the inclusion by the Council of the map in the appropriate material for demarcation meant a preconceived judgment on the course of the boundary line on the ground before the commencement of the demarcation process.

- The Secretary-General has proposed that the Commission of Demarcation be composed of five members, two representing Iraq and Kuwait and three independent experts chosen by the Secretary-General who appoints one of them as chairman, that the Commission's decisions be taken by a majority vote, that its decisions be final, and that the Commission be responsible before the Secretary-General. Iraq observed that those proposals did not provide the full balance between the opinions that might be adopted by each of the parties throughout the operation of demarcation, that so long as Iraq would not have any role in the choice of the experts, it would not be able to confirm in advance the fact of their independence; hence, its opinion in the course of the demarcation process would be represented only by a single member out of five.

- In addition to what was provided in resolution 687 (1991) about the basis upon which the process of demarcation depends, the Secretary-General provided other bases that were expressed in a vague and undetermined manner, such as the Commission would utilize "appropriate technology " and would " make the necessary arrangements for the identification and examination of appropriate material relevant to the demarcation of the boundary."

- The Secretary-General proposed that Iraq bore half the expenses of the demarcation process. This prompted Iraq, in the light of imposing the bases and the manner of demarcation, to question the basis of this opinion, specially when no consideration was given for Iraq's opinion in the overall boundary process and, thus, from this standpoint no justification on the basis of justice and fairness could be found in support of imposing upon Iraq payment of the said expenses.

- Even so, Iraq had assured its full readiness for consultations regarding its stated remarks, whether it be in New York or any other place, and its determination to cooperate with the Secretary-General " in compliance with " resolution 687 (1991) even if Iraq's views would not be taken into consideration owing to the continuation of the same circumstances which impose compliance upon Iraq.

The Secretary-General responded in his letter dated 30 April 1991 (S/ 22558, annex III) to the remarks and views of Iraq. He relied in his reply on the text of resolution 687 (1991) regarding the basis of demarcation as if they were unknown to Iraq, and he expressed to Iraq his assurances that he would be keen to guarantee the independence of the experts. He referred to the Demarcation Commission the task of interpreting some of the vague concepts of the demarcation bases on the pretext that his interpretation would affect the independence of the Commission's work. He stated that Iraq's participation in the Commission would enable Iraq to express its views; hence it had to bear half the expenses of the demarcation process. With such replies, the Secretary-General did not succeed in targeting the substantive issue of Iraq's remarks and views. The underlying point of Iraq's position was the hope that the Secretary-General would seek, in the light of the imposition by the Security Council of the boundary delimitation formula, and the bases and sources of demarcation, to ensure justice and fairness in regard to certain vital aspects of the demarcation process, namely, the method of the Commission's composition, the manner of carrying out its technical task, the method of taking its decisions and the nature of the said decisions and their characteristics. It was for the realization of that hope that Iraq had called for consultation; a call which was totally ignored by the Secretary-General after he had submitted his draft report, without any alterations, to the Security Council on 2 May 1991 (S/ 22558). The Secretary-General seems to have considered what he had done with Iraq as a fulfilment of the required consultation for the completion of the arrangements of the demarcation of the boundary.

In regard to the land boundary, the Commission adopted during its second session, held in Geneva from 2 to 12 July 1991, a number of crucial decisions, both substantive and technical, by which it settled the fundamental bases of what was to be the course of the land boundary. One of the most important substantive decisions of the Commission was the one relating to the creation of a turning - point at Safwan, a point, which controlled the overall course of the boundary in the north and in the direction to the east. Clearly, the two independent experts relied in their interpretation of the said direction, and in fixing the fundamental points thereof, on cartographic considerations based fundamentally on British correspondence and maps going back to the period when Britain was the dominating colonial Power in the region.

The representative of Iraq in the Demarcation Commission responded to the views of the experts by pointing out the aspects relating to the interpretation of the " delimitation " formula " provided in the Exchange of Letters of 1932 between the Government of Iraq and the Emir of Kuwait , the technical aspects relating to concentrating exclusively on cartographic material which would provide an incomplete appropriate material on demarcation as well as the haste on the part of the Commission to decide upon the substantive questions despite the Iraqi requests for mature consideration and the provision of time to enable the presentation of Iraqi appropriate material relating to demarcation.

After the Commission had adopted its decisions in regard to the fundamental points of demarcation of the land boundary, the technical criteria for the operation of demarcation and the technical measures to be carried out in the field, the experts went on to implement those decisions amongst which was to investigate the turning-point of the course of the boundary at Safwan. The two independent experts investigated the position in a manner that flatly contradicted the substance of the decision of the Commission. The decision of the Commission, which was adopted on 11 July 1991, authorized the experts to conduct investigations and collect information necessary to enable the Commission to decide upon the northern boundary precisely. It emerged during the fifth session of the Commission that the representative of Kuwait and his experts had accompanied the independent experts in their investigations in the area of Safwan contrary to the decision of the Commission, and that the experts had relied on the opinion of the Kuwaiti experts in determining the position of the turning-point in addition to the British sources.

Accordingly, the representatives of the Kuwaiti authorities, despite the fact that they represented a party with a direct interest in the question, participated in a field work which was entrusted to the experts and that the decision of the Commission did not authorize anyone to proceed along those lines. It is worth noting that the representative of Iraq in the Commission was informed of this situation after the investigation had been carried out, which was contrary to the principle of good faith.

The Demarcation Commission reached its final decisions on the land boundary in its fifth session held in New York from 8 to 16 April 1992. Following that, Iraq communicated its detailed position on the decisions of the Commission, and the question of the boundary as a whole, in the letter of the Foreign Minister to the Secretary-General, dated 21 May 1992
(S/24044).

On the occasion of inviting the representative of Iraq to participate in the sixth session of the Commission which was due to be held in New York from 15 July 1992, the Minister of Foreign Affairs of Iraq informed the Secretary-General in his letter dated 12 July 1992 of the reasons for the conviction that the participation of the representative of Iraq in the Commission would be to no avail. The reasons comprised the points set out in the previous letter of May as well as the clarity of the determination of the Commission to take up the demarcation of the maritime boundary despite the fact that the mandate of the Commission did not extend to include that matter (S/24275).

As for the demarcation of the maritime boundary, the Commission considered the question at its third session held in Geneva from 12 to 17 August 1991. During the discussion, the Chairman of the Commission Mr. Mochtar Kusuma-Atmadja (Indonesia) took the view that, given the nature and extent of the mandate of the Commission, it would be difficult to deal with the demarcation of the maritime boundary. This was because the said mandate did not authorize it to deal with the course of the boundary beyond the point of the junction of Khowr Zhobeir with Khwor Abd Allah (i.e., beyond that point to the sea) unless the parties agree to the contrary and the Commission could not extend its mandate on its own authority. The two independent experts shared the understanding of the Chairman. (For the details, see the Minutes of the Commission in documents IKBDC/Min.19, 40, and 49).

During the fourth session of the Commission held in New York from 7 to 16 October 1991, the representative of Kuwait requested to be granted the opportunity to make a statement on the maritime section of the boundary during the forthcoming session of the Commission. The Commission decided favourably on the request on the basis of its rules of procedure. When the representative of Kuwait made his statement during the fifth session of the Commission, held in New York from 8 to 16 April 1992, he discussed the mandate of the Commission and concluded that it encompassed the demarcation of the maritime boundary. Instead of declaring the conclusion of the work of the Commission on this question with the position that was adopted by the Chairman and the two independent experts during the third session of the Commission referred to above, the Chairman reacted simply with silence.

During the sixth session of the Commission held in New York from 15 to 24 July 1992, in which the representative of Iraq did not participate because of the Iraqi position explained earlier, the session of the Commission was devoted to the consideration of the report of the Commission to the Secretary-General. However, the Secretariat again inscribed on the draft agenda of the session an item on the consideration of the maritime section of the boundary. A heated debate on the question took place during the session between the representative of Kuwait and his advisers on the one side and the Chairman on the other. This was because of the Kuwaiti pressure on the Chairman and the two independent experts to adopt the position of Kuwait in regard to the demarcation of the maritime boundary. In fact, the Chairman of the Commission did not hesitate to reveal the glaring facts of the acts of pressure on, and interference in, the work of the Commission resorted to by the Assistant Legal Counsel of the Secretariat of the United Nations. (For the details, see document IKBDC/ Min.51, pp. 1-11, which relate to the point under discussion).

The Press Release issued by the Commission on 24 July 1992, it was noted that the ultimate result of the sixth session was, " to investigate the Khowr Abd Allah section further and to discuss it at a meeting to be held for that purpose in October." It is worth noting that the Press Release contained explanations stating that the decisions of the Commission relating to the demarcation of the land boundary did not cut off Umm Qasr, oil wells and lands from Iraq. It also stated, for the first time, that the Boundary Commission is not reallocating territory between Kuwait and Iraq, but is simply carrying out the technical task necessary to demarcate the precise coordinates of the international boundary between Kuwait and Iraq for the first time." It seems that this statement was included in response to instructions dictated upon the Chairman and the two independent experts of the Commission by the Secretariat to the effect that there was a need to explain the decisions of the Commission in order to face up to the extensive disquiet of the Western and Arab press.

Following that, the Commission continued in its seventh session held in New York from 12 to 16 October 1992 with its consideration of the maritime boundary in the light of the study presented by the two independent experts. The Commission requested the experts to continue with the collection of material on the subject.

It is to be noted that in the course of events, two important developments took place. As for the first of those developments, the Secretary-General transmitted, in his letter dated 12 August 1992 to the President of the Security Council the " Further Report " of the Commission, which was finalized during the sixth session. In regard to the maritime boundary, the letter stated: " As far as the offshore boundary is concerned, the Council might wish to encourage the Commission to demarcate that part of the boundary as soon as possible, and thus complete its work." This reference was made despite the fact that the Secretariat knew fully well that the Commission had not yet decided at the time on the basis of its mandate whether it was competent to demarcate the maritime boundary, and despite the fact that the position of the Commission's Chairman was very clear to it, a position which indicated an inclination to resign if the matter was imposed upon the Commission. The reference under discussion strengthens the impression that what had already been decided *a priori* was to satisfy Kuwait and the States supporting it in the Security Council, which planned the conclusion of the work of the Commission from the beginning regardless of contrary views and opinions. Accordingly, we find that on 26 August 1992 the Security Council acted swiftly in adopting resolution 773 (1992) paragraph 3 of which welcomed "the decision of the Commission to consider the Eastern section of the Boundary, which included the maritime boundary ", and urged " the Commission to demarcate this part of the boundary as soon as possible and thus complete its work." In this connection, it is worth noting that the Council referred to the notion of the Press Release of the Commission mentioned above that it was not reallocating territory between Kuwait and Iraq, and added to it another notion, namely that the work of the Commission " is being carried out in the special circumstances following Iraq's invasion of Kuwait and pursuant to resolution 687(1991) and the Secretary-General's report for implementing paragraph 3 of that resolution (S/ 22558)." The clarity of the identical language of the letter of transmittal of the " Further Report " of the Commission to the Security Council and the text of resolution 733 (1992), and the factual background of the Commission's discussions reflect unequivocally and without any doubt the concerted and coordinated efforts of Kuwait and certain quarters in the Secretariat, as well as certain member States in the Security Council, to direct the work of the Commission contrary to its mandate as defined by the Security Council itself in resolution 687 (1991) and the report of the Secretary-General in accordance with paragraph 3 of that resolution. That effort brought about the result just noted without reaching the extent of resorting to a clear- cut amendment of the mandate of the Commission, as that would have amounted to an open political and legal scandal. The same concerted action and coordination also shed light on what clearly appears in the Minutes of the Commission in regard to the repeated positions of the representative of Kuwait of the readiness to go back to the Secretariat and the Security Council to take up the required position on any occasion when a contrary point of view to his is put forward.

The second development concerned the resignation of the Chairman of the Commission as of 20 November 1992, which was announced in his letter addressed to the Secretary-General on 4 November 1992, and his detailed letter of 6 November 1992 addressed to the Legal Counsel of the United Nations. This letter indicated that the resignation was caused by two reasons, one of which was " personal ", and the other reason was, in the words of the letter, that " I have for some time had reservations about the terms of reference of the Commission." The Chairman revealed in his letter how he raised " for several times " with the Legal Counsel " some aspects of the terms of reference of the Commission " , and how he drew the attention that " the boundary in the off-shore section (Khowr Abd Allah) was not specifically referred to in the description of the frontier as contained in the 1932 Exchange of Letters, and therefore, delimitation was lacking for the Commission on which to base demarcation of this segment of the boundary." He also revealed how the Legal Counsel " made it clear " to him in April 1992 that " any change in the mandate of the Commission by the Security Council was out of the question." The letter also noted that the question was discussed once again between the Chairman and the Legal Counsel in May, and further discussed in two meetings between the Chairman on the one side and the Legal Counsel and the Secretary-General on the other in July and September 1992, when the Chairman had occasion to describe the situation which had made it impossible for me to continue unless certain modifications were made to the mandate of the Commission. " The letter then indicated: "Since I understand that it is difficult to change the present terms of reference, and for other personal reasons, I have no other course than to submit my resignation."

Upon the resignation of the Chairman, Mr.Nicolas Valticos (Greece) was appointed as Chairman , and the sixth session of the Commission was held in Geneva from 14 to 16 December 1992, during which the Commission hastily decided that the fundamental principle governing the demarcation of the boundary in Khowr Abd Allah should be the median line it being understood that the object and purpose of the boundary settlement was to facilitate navigational access to both parties!

The interference in the work of the Commission and the unlawful influences exerted thereon lead to a result, which raises a number of legal questions. These could be summarized as follows:

(1)- The delimitation formula adopted by the Security Council as the basis for the demarcation of the frontiers in resolution 687 (1991), and which was elaborated upon in the report of the Secretary-General submitted in accordance with paragraph 3 of the said resolution, contains no reference whatsoever to the description of the boundary in the Khowr Abd Allah. On this basis, it is impossible to rely on that formula in any demarcation operation of the type carried out by the Commission because demarcation should be based on a description of the frontiers, i.e. delimitation, agreed upon by the parties concerned.

(2)- The area of Khowr Abd Allah cannot be of the nature of the territorial sea on the basis of the delimitation of the frontiers approved by resolution 687 (1991) so as to enable the application of the rules of the law of the sea on the division of maritime areas between States with opposite or adjacent coasts.

(3)- Even on the assumption that it were part of the territorial sea, the area of Khowr Abd Allah is subject to the concept of " special circumstances", which was confirmed by the two independent experts, (see the Commission's Minutes in IKBDC/ Min.5 and 11), and accordingly, there is every justification according to the Law of the Sea Convention 1982 to delimit the territorial sea on another basis than the median line when there is no agreement between the parties to the contrary. The rules applicable in the presence of " special circumstances " gain special force in our case because there is no agreed formula for delimitation between Iraq and Kuwait in Khowr Abd Allah. In other words, the determination of the boundary in this area is taking place *de novo* , and so, it is possible to apply the rule of special circumstances.

(4)- Iraq possesses historic rights in the area of Khowr Abd Allah in which Kuwait has not exercised meaningful navigation, and, consequently, the area, as noted in paragraph 3 above, falls outside the application of the median line rule according to the Law of the Sea Convention 1982. For decades, Iraq spent millions of dollars on dredging, expanding and maintaining main and secondary navigational routes and channels leading to, and passing through, Khowr Abd Allah, and establishing ports and harbours in the area in order to ensure the flow of its trade at sea. The imposition of the boundary in Khowr Abd Allah in the manner done by the Commission constituted a grave denial of Iraq's historic right to free access to the sea by exercising secure and unrestricted navigation in Khowr Abd Allah to the extent that it would become virtually a land-locked State.

(5)- On the basis of its powers and functions under the Charter, the Security Council has no right to impose upon a member State a delimitation of its boundary because this competence is subject under international law to the rule of agreement between the States concerned. This question does not pertain, from a precise legal viewpoint, to matters relating to the maintenance of international peace and security, which fall within the powers of the Council. Consequently, the Security Council had acted *ultra vires* in this case, i.e. outside the limits of its functions and powers under the Charter.

With all this, the United Nations set the first unique precedent under the Charter without due respect to the principle of respect for State territorial sovereignty. This was indeed a principle, which the Council itself stressed in the third preamble paragraph of resolution 687.

Despite all this, however, Iraq recognized the sovereignty, territorial integrity, and political independence of Kuwait as well a its borders under resolution 833(1993).[1]

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[1] Iraq's Foreign Minister's letter of 12 November 1994 to the UN Secretary-General (S/1994/1288 dated 14 November 1994).

Prisoners of War and Missing Persons

The obligations imposed upon Iraq by resolution 686 (1991) included, *inter alia*, immediate release of all detainees, the return of any deceased so detained and the immediate access to and release of all prisoners of war and the return of the mortal remains thereof if any. Those obligations were to be implemented under the auspices of the ICRC.

On 5 march 1991, the ICRC addressed a memorandum to all the parties involved in the Gulf conflict setting out their obligations in regard to POWs and civilian internees under the four Geneva Conventions of 12 August 1949.

On that basis, the Parties concerned held a series of meetings at Riyadh, Saudi Arabia, under the chairmanship of the ICRC on 7, 21-22, 28 March 1991, the Parties, including Kuwait, signed Minutes, which set out the decisions adopted.

At this juncture, it is significant to note two very important points. In the first place, it can be readily seen from the Minutes signed at Riyadh that in all the subsequent meetings held after the meeting of 21-22 March 1991, the Parties no longer dealt with the question of repatriating prisoners of war of any member of the so-called coalition. The questions dealt with were those relating to the release and repatriation of Iraqi POWs and the military and civilian missing and mortal remains. Secondly, the Security Council adopted, on 3 April 1991, resolution 687 (1991), which contained two paragraphs, namely 30 and 31, on the question under discussion. These two paragraphs did not mention the term " Prisoners of War".. This is not fortuitous because the Security Council had the firm knowledge that there were no remaining non-repatriated POWs, as the factual account on the repatriation of POWs hereunder will show. Any view to the contrary would mean that the Council was ignorant of the facts when it adopted resolution 687 (1991), and makes a mockery of the agreements reached at the Riyadh Meetings under the auspices of the ICRC.

The factual situation in regard to the repatriation of POWs and civilian returnees is clearly indicated in the reports of the ICRC. The figures as indicated in the ICRC documents at the possession of Iraq indicate the following:

1. A total of 7,023 persons of various nationalities (POWs and civilians) have returned from Iraq to their home countries since the beginning of March 1991.
2. In the period from 13 March to 7 July 1991, three separate operations were carried out under ICRC supervision to repatriate the mortal remains of 8 British, 7 Americans and 1 Kuwaiti national.
3. In the course of the family reunification programme, 14 Kuwaiti nationals were repatriated from Iraq to Kuwait via Arar in Saudi Arabia on 15 December 1993, under the auspices of the ICRC. The number of persons thus repatriated since March 1991 comes to 5, 721. That is how matters stood on 1 July 1994.
4. The total number of persons repatriated to Kuwait or Saudi Arabia from 1991 to 1995 as well as persons self-repatriated is 6,498 (4,289 POWs; 2,193 civilians; and 16 mortal remains).

5. The first paragraph of the Non Paper submitted by the ICRC in New York to the Third Amorim Panel confirmed that "the ICRC at the end of the 1991 gulf war made arrangements for the global repatriation of more than 70,000 Iraqi and 4,000 Kuwaiti and allied POWs, and over 1,300 civilian internees and detained civilians of Kuwaiti or third nationality. Since then, in conformity with its mandate, the ICRC has pursued its efforts to contribute to the Parties' endeavors to trace all persons unaccounted for." (The ICRC non-paper is undated and it is annexed herewith).

As regards the work on accounting for missing persons, Iraq has participated actively and in good faith on investigating the fate of missing persons under the auspices of the ICRC.

Iraq has fulfilled in good faith all the obligations incumbent upon it. On the three counts emerging from the Riyadh Meetings, namely the release and repatriation of POWs and civilian internees, the return of mortal remains and the search for missing persons, the record of implementation by Iraq is beyond doubt. On the search for missing persons, which was categorized by the meeting of the Tripartite Commission held in Geneva on 16-17 October 1991 to include: constitution of individual inquiry files, active tracing through publication of lists, and ICRC visits to places of detention, Iraq's positive record of implementation is also beyond doubt. This basic conclusion remains the same whether seen through the agreements reached at Riyadh, or the provisions of paragraph 30 of resolution 687 (1991). The sum total of the facts, as clearly acknowledged in the Non Paper circulated by the ICRC in the third Amorin Panel that we do not have a POWs issue before us, but rather that of missing persons. Strangely enough, the "distinguished members of that Panel", while recognizing that the fundamental issue is whether the question before them was one of POW's or missing persons decline their responsibility to pronounce on the issue, alleging lack of sufficient time. This conclusion is reached despite the determination of the ICRC and the nearly six weeks that were at their disposal (See document S/1999/356, paragraph 43).

It is of the utmost importance to characterize the obligation of the parties in regard to this question. It is clear that the obligation in this connection is one of a "duty to cooperate" in investigating the fate of missing persons on the basis of individual inquiry files. This obligation falls upon both the party which presents the file and the one that receives it. The obligation of the party presenting the file does not end by mere presentation. Effective interaction in the exchange of information, discussion, fieldwork, and so on, should follow. Since the work is done under the auspices of the ICRC, ICRC standards should be strictly observed. Prime amongst these standards is the rule of confidentiality and non-politicization.

On the basis of the obligations thus characterized, Iraq has fulfilled and is fulfilling its obligations in the process of search for the missing persons. Certain definite results have been reached, and the work, despite the great difficulties described above, is continuing (See the document on this point annexed herewith).

It should not be overlooked that resolution 687 has been discriminatory in as much as it has not dealt with the problem of Iraqi missing persons.

For their part, the Iraqi authorities have submitted to the Kuwaiti authorities all the evidence relating to the disappearance of the missing persons and it is firm evidence meriting serious consideration. Among those missing Iraqis are civilians who were arrested in their homes in Kuwait in front of their families after the withdrawal of the Iraqi army from Kuwait. Others are civilians and military personnel who were seen by Iraqi and Arab witnesses in Kuwaiti detention centres or military hospitals during the first half of 1991 but who subsequently disappeared. While in the meetings of the Technical Subcommittee the Kuwaiti authorities kept asserting their willingness to ascertain the fate of the missing Iraqis, in practice they have so far failed to provide any information that might help in ascertaining their fate. In fact, the Kuwaiti Authorities have been ignoring all the Iraqi requests to shed light on the fate of the Iraqi missing persons. These authorities used to provide illogical answers claiming that they were not in control over the situation in Kuwait after the withdrawal of the Iraqi forces. They also claimed that some irregular groups were responsible for the arrests of the Iraqi civilians and military personnel but they were unable to identify these groups. Later, the Kuwaiti authorities retracted from this position claiming that they were under control of the situation inside Kuwait but have no information about any Iraqi missing persons.

Kuwait cannot shrink from implementing its obligations under the Geneva Convention. This duty cannot be discarded simply because the provisions of the resolutions of the Security Council took a discriminatory position. Those resolutions cannot replace the Conventions. Iraq, therefore, strongly demands that that Kuwait be forced to adhere to its conventional obligations.

Return of Kuwaiti Property

It is noticeable that the relevant resolutions of the Security Council on this subject acknowledge a priori that the Kuwaiti lists of property were correct. In June 1991, Iraq and the Coordinator of the Return of Property agreed on the priorities of return as determined by the Kuwait side. Iraq cooperated to the full with the Coordinator and returned the items in the quickest possible way. This fact is acknowledged in the earlier reports of the Secretary-General and the Coordinator.
In 1994, The Permanent Representative of Iraq to the United Nations informed the Secretary-General that Iraq had returned all the Kuwaiti property items found and committed itself to return all items to be found in the future (document S/1994/1099, 27 September, 1994). The same information was affirmed to the Secretariat on various subsequent occasions. Consequently ,Iraq fulfilled, within all limits humanly possible, its obligations in this field under paragraph 2 (d) of resolution 686 (1991) and paragraph 15 of resolution 687(1991).

It should be noted that Kuwait presented claims to the United Nations Compensation Commission for compensating items of property already returned to it through the United Nations. This can be seen from Claim No.5000114 of the Ministry of Information, where the items from Dar Al-Athar Al-Aslamiyya and the Kuwaiti National Museum were handed over in Baghdad to Kuwaiti representatives by Iraq during the period 14 September to 20 October 1991(see UNROP/01047); Claims Nos. 5000139, 5000181 and 5000192 by the Ministry of Defense; and, Claim No. 500044 by the Kuwaiti Central Bank, where 5 cabinets were returned to Kuwait (see UNROP/00421) .The presentation of these claims in the context of return of property proves that Kuwait has an avenue to follow.

Renunciation of Terrorism

In the implementation of Paragraph 32 of resolution 687 (1991), the Iraqi Minister of Foreign Affairs sent a letter dated 11 June 1991 to the President of the Security Council stating Iraq's firm position on denouncing all kinds of international terrorism.

The Initial Resolution: Resolution 660 (1990)

The resolution called upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences, and expressed support for all efforts in this regard, especially those of the League of Arab States.

It is noticeable that the Council jumped immediately, and unprecedently, to characterise the situation in a manner that enables the applications of Chapter VII of the Charter. However, the Council did not wait long enough to ascertain compliance by Iraq of the provisional measures it had pronounced, as this is the import of Article 40 of the Charter to which the resolution referred and the Council had presumably relied upon. In fact, soon after the adoption of the resolution Iraq declared its intention to withdraw from Kuwait as from 5 August 1990 according to a statement made by a spokesman of the Iraqi Revolution Command Council, which was circulated on the same day as a Security Council document (S/21346). The Security Council could have relied upon well-known established mechanisms to ascertain the seriousness of the Iraqi decision, such as verification by a committee composed of its members, or by the Secretary-General or his representative. The reference in the Iraqi decision to 5 August as a date to start withdrawing from Kuwait was not arbitrary, because there were Arab efforts to hold on that date a meeting at the summit level of five Arab States (Iraq, Kuwait, Saudi Arabia, Egypt and Jordan) in Jeddah to consider the situation on the basis of the initiative of King Hussein of Jordan.

On 3 August 1990, i.e. the day after the adoption of resolution 660, the United States hastened to present a draft resolution seeking to impose comprehensive sanctions on Iraq with a scope hitherto unprecedented in the UN history.

The Imposition of Sanctions: Resolution 661(1990)

On 6 August 1990, resolution 661 (1990) was adopted to impose in an unprecedented fashion the most comprehensive regime of mandatory sanctions against Iraq. In short, the sanctions covered all aspects of human life.

The resolution noted that Kuwait had expressed its readiness to comply with resolution 660, whereas it ignored Iraq's above-mentioned position. There was no other reason that comes to mind than the deliberate attempt to show Iraq in a state of non-compliance in order to establish legal responsibility, which would in turn justify the imposition of sanctions.

Another strange feature is the reference in the preamble of the resolution to the right of self-defence in accordance with Article 51 of the Charter. This reference seems to have been deliberately included in order to give a legal cover to the deployment of US forces in the region under the pretext of confronting any possible Iraqi threat to Saudi Arabia and of providing a basis for a subsequent resolution allowing the launching of war against Iraq.

In reality, the facts on the ground proved this conclusion. When consideration of the US draft resolution on sanctions which had been circulated on 3 August, was postponed, as we indicated earlier, the then US Secretary of Defence Dick Cheney visited Saudi Arabia, Egypt and Morocco. On 6 August, Cheney secured the Saudi agreement to station American troops in the Kingdom. Immediately resolution 661 was pushed to a vote and was adopted the same day by the Council. Upon Cheney's return to the US, he stopped in Egypt, where he received Egyptian support and agreement to participate in the military coalition against Iraq as well as the readiness to call for the convening of an Arab Summit in Cairo. He stopped further in Morocco where he could not achieve more than a promise for a symbolic participation in the coalition. On 8 August, Egypt called for the convening of an Arab Summit in Cairo, which was held eventually on 10 August. The Arab Summit decision provided for supporting the Saudi measures of self-defence in accordance with the Arab covenants and Article 51 of the UN Charter, and called for the positive response to Saudi Arabia's request that Arab forces be deployed to support the Saudi exercise of self-defence against any foreign aggression.

Moreover, it is to be noted that before the adoption of this resolution, the United States took on 2 and 9 August 1990 immediate punitive economic measures against Iraq, by freezing Iraqi assets, on the basis of two Executive Orders. It is significant that these orders were relevant not only to Iraqi interests in the United States but also to the overseas branches of US companies.

Transforming The Sanctions to Embargo: Resolutions 665(1990) and 670(1990)

Be that as it may, however, nineteen days after the adoption of resolution 661, the Security Council instituted a ' maritime embargo' to strengthen the effectiveness of the sanctions regime, when it adopted on 25 August 1990 resolution 665 (1990). A month later, the Council tightened the embargo by resolution 670 (1990) of 25 September 1990 by which it decided to apply resolution 661 to all means of transport, including aircraft.

It should also be noted that the United States was instrumental in pressing for establishing the maritime embargo and extending it to the air, although the 'embargo' is a measure of war which requires a specific authorization under Article 42 of the Charter of the United Nations. But the objective was reached after intensive American pressure in the Security Council and the capitals. The legal hurdle was deceptively overcome by resorting to the concept of 'interdiction'.

The key provision of resolution 665 (1990) is: "
Calls upon those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990);..."

Features of the Resolutions Adopted During the Period from the Embargo to the War Resolution

It is not accidental that we see in the resolutions adopted by the Security Council prior to resolution 678 (1990) certain symptoms that are not consistent with the proper legal application of the provisions of the UN Charter. If the whole process is looked upon as an integrated whole, it seems that the Security Council had adopted the resolutions in an accelerated manner, setting off right from the start from Chapter VII, under which resolutions are obligatory. It is also clear that the resolutions had been linked to each other physically. Each resolution had been a springboard for a subsequent one with the conscious effort to lay down the foundation for the final goal, namely waging war against Iraq, which was the objective of resolution 678 (1990).

Resolutions 665(1990) and 670(1990

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It has been correctly observed that: " [t]he wording was highly significant. 'Such measures... as may be necessary' made it plain that force was not prohibited. In the main, US and British naval captains would be the judges as to what measures would be necessary to interdict Iraqi shipping: the UN, having provided a *de jure* authorisation for the use of *any* measures deemed necessary, no longer had a role in the matter. The UN 'flag of convenience' to sanctify military action had been raised."

Thus, the Council rid itself of its established responsibilities and left for, mainly, the US and Britain the means of how to control the situation. By that, the Council accepted its being taken as a cover to legitimise the adoption of the resolutions. The most obvious indication of such a conduct by the Council was that it did not encourage the efforts to reach an Arab solution or the mediation that had been foiled by the United States.

The War Resolution: Resolution 678(1990)

The coalition war against Iraq was waged in pursuance of resolution 678 (1990), which was adopted on 29 November 1990. The resolution authorised member states co-operating with the government of Kuwait, unless Iraq would fully implement, on or before 15 January 1991, all previously adopted Security Council resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area. It also requested all states to provide appropriate support for the actions undertaken in pursuance therewith. All the States concerned were requested " to keep the Security Council regularly informed on the progress of actions undertaken".

It is significant to recall that the resolution was adopted, in the presence of thirteen foreign ministers of the members of the Council by a vote of 12 in favour, 2 against (Cuba and Yemen) and one permanent member abstention (China).

The legal assessment of resolution 678 (1990) should take into consideration a number of cardinal points.

In the first place, the UN is primarily an Organisation for peace. The UN must have known the US reluctance to see a peaceful political settlement. President Bush declared policy was well-known: "no negotiations, no compromises, no attempts at face-saving, and no rewards for aggression". Those were his instructions by his so-called offer of meetings at the foreign ministers level to be held in Geneva, and the American Secretary of State James Baker was so instructed when he set out to meet with Iraq's Foreign Minister Mr. Tariq Aziz.

Moreover, if this much was known, then war should not have been authorised, or even threatened by way of a set deadline.

The UN role and purpose had been perverted, and the UN virtually disappeared as an actor.

We believe that the legitimacy of resolution 678 is questionable no matter how one tries to evaluate its provisions within a precise legal framework. It is also clear that the so-called UN authorisation in this case rests on an extremely weak foundation.

Conduct of the War

As regards the manner in which resolution 678 was implemented, it is well- known that the hostilities of the coalition forces started on the night of 16/17 January 1991 and actually continued for 45 days, although the cease-fire was declared two days before.

Except for the last days of the war, the military operations against Iraq were not carried out in the real battlefield, Kuwait. But rather, Iraq as a whole was targeted fully and in all aspects of life, as we shall see. The outcome of all this was a complete halt of all the necessities of life, exactly as the American Secretary of State mentioned in his meeting with the Iraqi foreign Minister in Geneva on 9 January 1990, when he said that war would destroy everything Iraq struggled to build for its people and Iraq would be returned to the pre-industrial age.

Tthe United States deliberately aborted the endeavours aimed at putting the war to an end and achieving peace through diplomatic efforts instead of continuing with shedding blood and destruction. This was the case with the Soviet endeavours aimed at aborting the ground offensive and putting an end to the war, which resulted in five points to end the war.

There were, also, strenuous efforts to instigate armed rebellion against the government in Iraq, a matter, which was not stated or authorised by the Security Council.

The Security Council was not engaged in any aspect of the foregoing and the military effort against Iraq was not an action of the United Nations. Perez de Cuellar, the then Secretary-General of the United Nations admitted this when he said on 10 February 1991: " The Persian Gulf war was not a classic United Nations war in the sense that there is no United Nations control of the military operations, no United Nations flag, blue helmets, or any engagement of the Military Staff Committee." He continued: What we know about the war. . . is what we hear from the three members of the Security Council which are involved-Britain, France, and the United States-which every two or three days report to the Council, after the actions have taken place." Then, signalling discomfort with the turn of events and a serious concern for the loss of human life, the Secretary-General added-ruefully: "As I am not a military expert I cannot evaluate how necessary are the military actions taking place now…I consider myself head of an organisation which is first of all a peaceful organisation and secondly a humanitarian organisation."

The most significant fact to note is that a number of grave violations of international humanitarian law pertaining to the conduct of hostilities were committed.

An explosive tonnage judged equivalent to seven Hiroshima-size atomic bombs. The coalition forces - principally the United States - used a wide variety of armaments in the Gulf War, some traditional (though improved) and some relatively untried. Extensive use was made of depleted uranium projectiles because of their capacity to destroy armour and other defences. One estimate suggests that American tanks fired between 5000 and 6000 depleted uranium projectiles, while tens of thousands of these weapons were fired by aircraft.

There can be little doubt that civilians too were targeted. On 13 February, in a widely publicised atrocity of the war, more than four hundred civilians – men, women and children – were incinerated by the US bombing of the Amiriyah shelter in Baghdad.

It is useful to note that the US forces in Iraq, carried out a prodigious onslaught on many civilian targets. Here it specifically acknowledged by US sources that the identified targets went far beyond the requirements of military necessity, a principal goal being to maximise the economic and psychological devastation of the Iraqi nation.

There can be no doubt that a principal aim of the US military planners was to destroy Iraq's civilian infrastructure and so to reduce the country to a pre-industrial condition. A wide range of civilian assets - only a proportion of which were directly relevant to the situation in Kuwait - were targeted and destroyed. These included: electric power stations, relay and transmission systems; water treatment facilities, reservoirs, water distribution systems; telephone exchanges, relay stations; radio exchanges, transmission systems; food processing plant, food warehouses, food distribution facilities, infant milk formula factories, beverage factories; irrigation sites; animal vaccination facilities; buses and bus depots, trains and railways; bridges, roads and highway overpasses; oil wells, oil pumping systems, pipelines, oil refineries, oil storage facilities, petrol stations, fuel delivery vehicles; sewage treatment plant, sewage disposal systems; textile factories; automobile assembly plant; universities and colleges; hospitals and clinics; places of worship; and, archaeological sites.

The Cease-fire Resolution: 686 (1991)

On 2 March 1991, the Security Council adopted resolution 686 (1991), which ended the hostilities temporarily. The resolution was adopted by 11 votes in favour, one against (Cuba) and three abstentions (China, India and Yemen). Prior to voting, the Security Council refused 17 amendments submitted by Cuba, which proposed, *inter alia*, to declare an unconditional and immediate cease-fire, and to delete all the references to the phrase "all necessary means", used in resolution 678 (1990), which was kept in resolution 686.

The resolution did not assign any task to the United Nations, the Security Council or the Secretary-General. The resolution seemed to support the occupation of some parts of Iraq's sovereign territory, and entailed the continuation of military actions against Iraq, for neither the Council nor the United Nations could enter the theatre of operations; it was only the Generals who could decide on what was to be done.

It is noticeable that the obligations set forth in resolution 686 were one-sided. They were placed upon Iraq alone and Iraq's interests as a sovereign member State was not taken into consideration. Nevertheless, Iraq has fully implemented resolution 686. In fact, as Iraq was implementing resolution 686, the consultations began on a draft resolution identifying the conditions of the formal cease-fire.

Conditions of Life in Iraq at the Time of Cease-fire and Thereafter

At the end of the war, with the military onslaught having compounded the early effects of the embargo, the Iraqi people faced a survival crisis of apocalyptic proportions. The water and sanitation systems collapsed. Food was already in short supply; and hospital supplies (drugs, disinfectants, equipment, etc.) already massively depleted, were not being replenished. In early March 1991 the Tigris river, a source of drinking water for thousands of civilians, was receiving gushing streams of raw sewage. All the sewage treatment facilities had been massively eroded and faced further deterioration. There were predictions – in the event fulfilled - of outbreaks of cholera, typhoid, hepatitis and polio before the war all virtually eradicated from Iraq.

The impact of the war and of the draconian embargo on Iraqi civilians in general and on Iraqi children in particular was well known to Washington and the rest of the international community in 1991. Eight detailed reports had been compiled by academics from various countries, and there was broad agreement on the dire situation that Iraq faced: an impoverished and increasingly diseased population was suffering a progressive decline into social decay, malnutrition, and starvation.

The war, reinforced by comprehensive economic sanctions transformed much of Iraq into a polluted and radioactive environment.

The allied forces left at least 40 tons of depleted uranium on the war battlefields, according to a secret report produced by the United Kingdom Atomic Energy Authority (ASA).The report suggests that there was enough depleted uranium (DU) in southern Iraq to cause 500 000 potential deaths. In the period after the war, international medical personnel noted a rapid increase in the number of childhood cancers, particularly leukaemia. It was subsequently reported that the soil and water table had been contaminated, with such contamination set to last as long as the earth. Documents released under the US Freedom of Information Act stated that the American, British and Saudi armies fired about 4000 depleted- uranium- tipped tank rounds, and that US Air Force A10 aircraft fired around 940000 30 mm bullets. The A-10s used DU ordinance against tanks, other armoured vehicles, trucks and roads. Here it is suggested that as much as 300 metric tons of radioactive uranium litter wide areas of Iraq and that the ionising radiation (both alpha and gamma) is known to be carcinogenic. The US Army has admitted that some soldiers were unknowingly exposed to DU radiation during the war – a circumstance thought by many observers to have contributed to the so-called Desert Storm syndrome that continues to afflict tens of thousands of coalition personnel.

Massive volumes of pollutants were released when industrial plants, electrical power stations and oil facilities were bombed during the war.

Substantial air and ground pollution was caused by the bombing of oil wells and other oil facilities.

The military devastation of the social infrastructure, with the subsequent denial of all the means to remedial reconstruction, inevitably resulted in a mounting toll of civilian casualties. With three-quarters of the Iraqi population living in cities by the late 1980s, the bulk of the social provisions - hospitals, clean water, sewage treatment, communications, manufacture, agriculture, etc. - depended on electrical power. But the attack on the infrastructure (with power stations one of the principal target categories) resulted in comprehensive erosion of all these provisions. In many areas water treatment was no longer a practical option, raw sewage flooded into rivers that supplied drinking water, and hospital and other health provisions had virtually collapsed. In the immediate aftermath of the war much of the Iraqi population was driven to pre-industrial subsistence methods of survival, with all the inevitable social consequences that this situation implied: hospitals struggling to cope, with only a trickle of medicines and other supplies; surgical operations, including caesareans, performed without anaesthetics; no spare parts to repair resuscitation and laboratory equipment; hospital wards full of dying children; a growing incidence of nutritional and other diseases; and an ever diminishing government food ration. At the same time the collapse of the social infrastructure, coupled with the impossible economic pressures on ordinary families, was leading to a substantial increase in the levels of illegal abortions, social violence, theft, suicides and family collapse.

The international community knew well what had transpired. In March 1991, Martti Ahtisaari, the UN Under-Secretary-General for Administration and Management, led an investigation team to Iraq to report on the situation. His subsequent report to the UN Secretary-General stated:

> *The recent conflict has brought near-apocalyptic results upon the economic infrastructure of what had been, until January 1991 a rather highly urbanised and mechanised society."*

In regard to food, the impact of the United Nations mandated comprehensive embargo was already plain in March 1991. All food stocks were at critically low levels or had already been exhausted; powdered milk was only available for sick children on medical prescription; and livestock farming had been 'seriously affected by sanctions because many feed products were imported'. The grain harvest was compromised because of the destruction of the drainage/irrigation system, the lack of pesticides and fertilisers (formerly imported), and the lack of fuel and spare parts for the harvesting machines.

This was the reality of the comprehensive embargo and the coalition war and their immediate consequences on Iraq and its people.

The Formal Cease-fire Resolution: 687 (1991)

On 3 April 1991, the Security Council adopted resolution 687 (1991) by a vote of 12 in favour, one (Cuba) against and two (Ecuador and Yemen) abstentions. Resolution 687 was one of the widest, longest and most complex resolutions ever adopted by the Council (26 preamble paragraphs and 34 operative paragraphs).

It seems that the broad difference of opinion which is reflected in the historical background of the texts of resolution 687, were in relation to the general objectives they sought to achieve. In this context, a study states:

> *"The broad objective is the restoration of international peace and security, but this elastic phrase was understood differently by different delegations. Sir David Hannay of the United Kingdom for example suggested that peace and security would not be restored until Saddam Hussein was removed from power. Similarly, the United States came to see it as a way of bringing additional pressure on Iraq and of encouraging the overthrow of Saddam Hussein. In George Bush's Presidential Statement on the Passage of the Persian Gulf Cease- Fire Resolution, he said it "provides the necessary latitude for the international community to adjust its relations with Iraq depending on Iraq's leadership and behavior."*

On March 1, shortly after open hostilities had ended, President Bush said at a White House news conference: "I have always said that ... the Iraqi people should put Saddam aside. That would facilitate the resolution of all these problems that exist, and certainly would facilitate the acceptance of Iraq into the family of peace loving nations."

Resolution 687 (1991) stipulated that Iraq's acceptance thereof will result in an official cease-fire. This acceptance was declared on 6 April 1991 in a letter by Iraq's Foreign Minister sent on the same date to both the President of the Security Council and UN Secretary-General (document S/22456). It should be borne in mind that in that letter Iraq indicted a number of strong objections to the provisions of the resolution, and pointed out that it had no other choice but to accept the resolution.

A distinct feature of resolution 687 is that the broad and comprehensive provisions which had been provided do not seem to be closely relevant to the restoration of international peace and security. Apparently this resolution demonstrates the double feature of continuing the repressive measures embodied in the embargo on one hand, and in being a peace treaty with all the political and legal traits that such a treaty would include and which are inconsistent with the nature of the UN Charter provisions, on the other.

Functions and Powers of the Security Council

The case of Iraq underscores the need to reaffirm and clearly define the functions and powers of the Security Council and the legal constraints thereon. It is clear that the Council's significant power to act in international affairs must be subject to international law.

For almost nine years, the Security Council has maintained, without precedent, the most comprehensive embargo against Iraq without once referring to its legal obligation to act in accordance with human rights and humanitarian principles.

The power and moral authority of UN member States acting collectively through the Security Council argues for holding the Council to a higher standard of human rights protection than individual States.

The procedural duties require that the Security Council recognize, consider, and account for the impact of its activities on human rights. The Security Council has also violated its procedural duties by failing to implement its resolutions in regard to reducing or lifting sanctions commensurate with the record of implementation by Iraq.

The Security Council's failure to acknowledge its legal obligations to the people of Iraq has left the dangerous impression- completely at odds with the UN Charter's proclamation of "faith in fundamental human rights and in the dignity and worth of the human person" - that the Council is at liberty to impose collective punishment on a population.

The substantive duties of the Security Council include the particular care to ensure that its activities do not result in violations of principles of human rights and humanitarian law, particularly among vulnerable populations such as children and women, which enjoy special protection under international law.

The foreseeable and avoidable deaths of hundreds of thousands of children clearly implicate a number of fundamental human rights. Most important is the right to life, considered by the UN Human Rights Committee to be "the supreme right from which no derogation is permitted even in time of public emergency." The tragic loss of life in Iraq due to the embargo constitutes a massive violation of this most fundamental human right. The embargo has also contributed to violations of the rights to health and to an adequate standard of living, guaranteed by the Universal Declaration of Human Rights, the International

Covenant on Economic, Social, and Cultural Rights, and other international treaties.

It is significant that children have suffered disproportionately from the embargo. Under human rights law, children are considered uniquely vulnerable and are granted special protection. More countries have ratified the Convention on the Rights of the Child than any other human rights treaty in history, including all permanent members of the Security Council. Among its provisions, the Convention specifically recognizes that " every child has the inherent right to life" and calls on all States "to ensure to the maximum extent possible the survival and development of the child" and "to take appropriate measures to diminish infant and child mortality".

The overwhelming evidence on horrendous record of the violations of the universally accepted rules of international humanitarian law contained in the 1949 Geneva Conventions and the two Additional Protocols thereto, relative to the conduct of hostilities which have been committed by the coalition forces (a glimpse of which have been shown above), is clear for everyone to see However, the Security Council has failed until now to take any action in respect thereto. Moreover, imposing comprehensive embargo that causes total economic collapse and the deaths of hundreds of thousands of civilians appears on its face to violate the principle of distinction between belligerents and civilians. Civilians should have never been the target of attacks, nor any object that is closely related to their lives. The 1977 Protocol I Additional to the Geneva Convention is clear on these points. The relevant point can be found in Articles (52) to (53) and (54) to (56) of the Protocol.

Another failure on the part of the Security Council can be seen in area of administering the comprehensive embargo. The most critical account of the system can be summarised in the words of a writer; he said : " This system, nominally resting on the terms of the appropriate UN Security Council resolutions, has evolved as a genocidal instrument administered jointly by the official bureaucracies in individual countries and the UN Iraq Sanctions Committee."

If we turn to the oil for food programme, we notice the same phenomenon. The obstructions, delays, political manipulations, ill motivated practices, inefficiency, resource squandering , profiteering, personal gains, and the like of practices, are widespread. Here again, the United States of America and the United Kingdom take the lead to ensure the viability of their ominous political agenda against the Government of Iraq. But despite all the political pressures and manipulations, the second Panel established by the Security Council on 30 January 1999 to " assess the current humanitarian situation in Iraq and make recommendations to the Security Council regarding measures to improve the humanitarian situation in Iraq", under the chairmanship of the Brazilian Permanent Representative to the UN in New York Mr. A. Celso L. N. Amorim, could not, with all the craft of the UN language, hide the real situation. In the last paragraph of its report, the panel categorically stated: "In presenting the above recommendations to the Security Council, the panel reiterates its understanding that the humanitarian situation in Iraq will continue to be a dire one in the absence of a sustained revival of the Iraqi economy, which in turn cannot be achieved solely through remedial humanitarian efforts."

The Security Council actions in the situation between Iraq and Kuwait demonstrate a set of negative points, which demonstrates clear disregard to the principles of justice and equity resulting from neglecting the proper legal application of the provisions of the UN Charter. The logic of brutal force has prevailed in the determination of rights and duties.

Crises were often created, especially whenever the date set for the review of the sanctions imposed on Iraq approaches, with a view to keeping the sanctions in place. This conduct is plainly manifest in the implementation of the provisions of section C of resolution 687 (1991).

Furthermore, the process of implementation seems to have been arranged pursuant to pre-established mechanisms and imposed with the seal of the Security Council as if they were originally adopted by the Council. This has been specially the case with the demarcation of borders and the establishment and implementation of compensation mechanisms.

Honesty and objectivity have been absent in the methods of work and in the assessment of the provisions and obligations that have been fulfilled. A glaring example of this is the positions adopted by UNSCOM and the IAEA over the years in their field of competence.

The non-recognition of Iraq's compliance with its obligations, and the punitive measures of the comprehensive embargo, went hand in hand in response to a subjective policy of one or two permanent members, which is irrelevant to the provisions of Security Council resolutions.

The Security Council has not honoured its commitment under paragraph 22 of the resolution to lift the economic embargo. Moreover, although paragraph 21 of the same resolution provided for lifting or reducing the sanctions in the light of the policies and practices of the Government of Iraq, the Security Council has not honoured its commitments under these paragraphs.

The Security Council has relinquished its responsibilities to exercise its powers and functions under the Charter as a result of the logic of unjust force adopted by the United States and its absolute hegemony on the United Nations, and the Security Council in particular. First and foremost, this is clearly demonstrated when the Security Council stood aloof during the preparation for, and the waging of, the destructive war against Iraq by the United States and the so-called "coalition". The serious violations of international humanitarian law committed by the United States and the coalition forces during the war brought no action from the Security Council. The Council also failed so far to exercise its powers and functions, under the Charter, in regard to the US-British aggression launched against Iraq from 16-20 December 1998 and the daily acts of aggression committed by the United States and Britain in the no-fly-zones.

The Council neglected the imperative nature of seeking a peaceful settlement to the situation rather than to aim from the start at punitive measures and waging war. The Council has frequently changed the obligations to be fulfilled and the goals sought. This phenomenon appears clearly in the fields of compensation, the demarcation of the borders, and the disposition of Iraq's assets for the purposes of the so-called the "UN humanitarian programme" in order to achieve merely political objectives. The same phenomenon has also become very clear through the resolutions and statements adopted in the field of disarmament. The Council was not immune from following double-standards. While the Council focused on disarming Iraq, it paid no attention so far to the application of paragraph 14 of resolution 687 (1991), calling for turning the Middle East into a zone free from weapons of mass destruction.

Albeit a political organ, the Security Council's authority to act in accordance with Chapter VII of the Charter is not free from all legal limits.